

NARASINGH PATNAIK

v.

STATE OF ORISSA

ARPII 2, 1996

[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

Service Law—Compulsory retirement—Recommended by Review Committee in public interest, considering two adverse confidential reports and pending departmental proceedings and a criminal investigation against the appellant—Promotion of the appellant after adverse reports and quashing of departmental proceedings etc.—Relevance of—Adverse remarks in the annual confidential reports by themselves cannot sustain the opinion leading to compulsory retirement of the appellant in public interest—Order of compulsory retirement quashed—Orissa Service Code—Rule 71 (a).

The appellant joined the Irrigation Department of Government of Orissa as an Assistant Engineer (Irrigation) in 1956 and had been gradually promoted as Chief Engineer in 1984 on *ad hoc* basis and his promotion was regularised in 1985. In 1986 the appellant was compulsorily retired from service by an order passed by the State Government under the first proviso to Rule 71(a) of the Orissa Service Code.

The order of compulsory retirement of the appellant was passed on the basis of recommendation made by the Review Committee based on certain circumstances including corruption, irregularities and a vigilance case against him.

Appellant approached the Orissa Administrative Tribunal contending that there was no material before the State Government to form the requisite opinion for his compulsory retirement from service. The Tribunal dismissed the application. Hence, this appeal.

Allowing the appeal, this Court

HELD :1.1. After the remarks were made in the confidential reports for the years 1975-76 and 1977-78 the appellant had been promoted on the post of Superintending Engineer in the year 1978 and thereafter as Chief Engineer in 1984. In respect of the year prior to 1975-76, in the year 1976-77

and in the years subsequent to 1977-78 the performance of the appellant was appraised as "good". In these circumstances, the adverse remarks in the annual confidential reports for the years 1975-76 and 1977-78 by themselves cannot sustain the opinion leading to the compulsory retirement of the appellant on the basis that further retention of the appellant in service was not in public interest. [1067-C-D]

Baikuntha Nath Das and Anr. v. Chief District Medical Officer, Baripada and Anr., [1992] 2 SCC 299, relied upon.

1.2. Apart from the adverse entries in the confidential reports for the years 1975-76 and 1977-78, the other circumstances on which reliance was placed by the Review Committee were proceedings wherein either explanation had been asked for from the appellant or where the explanation had been given and the matter was under consideration of the authorities and all those proceedings were subsequently dropped. Similarly, the vigilance case which had been registered against the appellant by the Vigilance Department for possession of properties disproportionate to his known source of income was at the investigation stage at that time and subsequently after completing the investigation the appellant has been exonerated and the final report has been submitted which has been accepted by the Chief Judicial Magistrate. The penalty of withholding of three increments which was imposed by the State Government on the appellant has been quashed by the Orissa Administrative Tribunal. Hence these circumstances relied on lost their significance. [1066-A-D]

2. In the normal course the appellant would have retired on April 30, 1991 after attaining the age of superannuation of 58 years. As a result of the quashing of the order of compulsory retirement dated March 5, 1986, the appellant has to be treated to have continued in service till April 30, 1991 and for the purpose of pension and other retiral benefits the pay should be fixed as on April 30, 1991 and the pension and retiral benefits payable to him should be computed on that basis. As regards arrears of pay and other emoluments for the period from March 5, 1986, the date of the order of compulsory retirement till April 30, 1991, the date of his attaining the age of superannuation, the appellant should be paid 50 percent of the pay and emoluments payable to him for this period.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 645 of 1988.

From the Judgment and Order dated 28.9.87 of the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 44 of 1986.

Jayant Das and Raj Kumar Mehta for the Appellant.

Indrajeet Roy, Adv. General Orissa and P.N. Misra for the Respondent.

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. This appeal is directed against judgment of the Orissa Administrative Tribunal (hereinafter referred to as 'the Tribunal') dated September 28, 1987 in O.A. No. 44 of 1986 filed by the appellant assailing the order dated March 5, 1986 regarding his premature retirement from service.

The appellant joined service as an Assistant Engineer in the Irrigation Department of the Government of Orissa on April 1, 1956. He was promoted as Executive Engineer on ad hoc basis on March 2, 1962 and in 1963 his promotion on the post of Executive Engineer was regularised after obtaining the concurrence of the Orissa Public Service Commission. On May 21, 1978 he was promoted as Superintending Engineer on ad hoc basis and the said promotion was regularised in 1979 in consultation with the Orissa Public Service Commission. On November 30, 1984 the appellant was promoted as Chief Engineer (Irrigation) on *ad hoc* basis and the said promotion was regularised on the recommendation of the Orissa Public Service Commission on August 23, 1985. By order dated March 5, 1986 the appellant was compulsorily retired from service. The order of compulsory retirement of the appellant was passed in exercise of the powers conferred by the first proviso to Rule 71(a) of the Orissa Service Code which empowers the State Government to compulsorily retire a Government servant after his attaining the age of 50 years or his completion of 25 years service if the State Government is of the opinion that his further retention in service was not in public interest. In the petition filed before the Tribunal the appellant has submitted that there was no material before the State Government to form the requisite opinion for his compulsory retirement from service. The said contention has not been accepted by the Tribunal.

The order of compulsory retirement of the appellant was passed on the basis of the recommendations made by the Review Committee duly constituted for that purpose. The said Review Committee in its meeting held on February 15, 1986 reviewed the service record of five officers, including the appellant, who had completed 50 years of age and it recommended premature retirement of the appellant. From the proceedings of the said meeting of the Review Committee (a copy of which has been placed before us by the learned Advocate General appearing for the State of Orissa) we find that the recommendations of the Review Committee are based on following circumstances.:

(1) There were adverse entries in annual confidential reports of the appellant for the years 1975-76 and 1977-78.

(2) A vigilance case has been registered by the Vigilance Department against the appellant for possession of properties disproportionate to his known source of income.

(3) The appellant has also been asked to explain the allegation of corruption during his incumbency as Executive Engineer, Balimela Dam Project.

(4) Charges have been framed against him for committing irregularities in splitting up the work during his incumbency as Superintending Engineer, Central Irrigation Circle.

(5) His explanation has also been asked for placing orders with a firm in Calcutta for supply of 20 tarpaulins at a cost of Rs. 37,759.66 paise without following the codal formalities and without proper tender enquiries for ascertaining the lowest available rate during his incumbency as Superintending Engineer, Central Irrigation Circle.

(6) Proceedings have also been started against him for taking up work of improvement at Kaushalayagang Fishery Farm at an estimated cost of Rs. 4,22,565 and for splitting up the contract into two to bring this within the financial limit of his power without obtaining the approval of the Chief Engineer for splitting up the work and thus violating the provisions of the Orissa P.W.D. Code. The matter being referred to the Administrative Tribunal for enquiry by the G.A. (Vigilance) Department, the Administrative Tribunal recommended to demote the appellant to the rank of Execu-

tive Engineer but the Government after careful consideration had decided to reduce his three increments.

(7) He was asked to explain the charge that as Superintending Engineer, Central Irrigation Circle in the year 1981, he committed irregularities in the matter of disposal of 50 m.t. of scrap steel. He submitted his explanation and the matter is pending further enquiry.

It has been submitted by Shri Jayant Das, the learned counsel appearing for the appellant, that in the vigilance case (circumstance No. 2), which was registered by the Vigilance Department for possession of property disproportionate to his known sources of income, a final report was submitted by the police after completing the investigation and the same has been accepted by the Chief Judicial Magistrate, Cuttack by order dated February 29, 1988. As regards circumstance No. 3 wherein the appellant was asked to explain allegations of corruption during his incumbency as Executive Engineer, Balimela Dam Project, it has been submitted by the appellant that on the receipt of preliminary explanation and after taking the view of the Engineer-in-Chief the contemplated proceedings were dropped. With regard to circumstance No. 4 about charges being framed against the appellant for committing irregularities in splitting up the works during his incumbency as Superintending Engineer, Central Irrigation Circle, it has been submitted that after explanation has been submitted by the appellant no further action was taken and the proceedings were dropped. The matter referred to in circumstance No. 5 was also dropped. As regards circumstance No. 6 relating to the proceedings initiated against the appellant in respect of Kaushalayagang Fishery Farm, it has been submitted that at the time when the matter was considered by the Review Committee the order of the Government imposing the penalty of withholding three increments on the appellant had not been intimated to the appellant and that thereafter the appellant had challenged the said order by filing a petition (O.A. No. 487 of 1988) before the Orissa Administrative Tribunal which petition has been allowed by the Tribunal by judgment dated December 4, 1991 and the order of the State Government imposing the said penalty has been quashed. As regards circumstance No. 7, it has been submitted that the proceedings in the matter of disposal of 50 m.t. of scrap steel has been dropped. The dropping of the proceedings in respect of circumstances Nos. 3, 4, 5 and 7 has not been disputed by the respondent. Nor is the submission of the final report in the Vigilance case

(circumstance No. 2) and its acceptance by the Chief Judicial Magistrate as well as quashing of the order imposing the penalty of withholding of three increments (circumstance No. 6) disputed by the respondent. It would thus appear that apart from the adverse entries for the years 1975-76 and 1977-78 the other circumstances on which reliance was placed by the Review Committee were proceedings wherein either explanation had been asked for from the appellant or where the explanation had been given and the matter was under consideration of the authorities and all those proceedings were subsequently dropped. Similarly, the vigilance case which had been registered against the appellant by the Vigilance Department for possession of properties disproportionate to his known sources of income was at the investigation stage at that time and subsequently after completing the investigation the appellant has been exonerated and the final report has been submitted which has been accepted by the Chief Judicial Magistrate, Cuttack. The penalty of withholding of three increments which was imposed by the State Government on the appellant in the proceedings relating to work of improvement in Kaushalayagang Fishery Farm has been quashed by the Orissa Administrative Tribunal.

The only material which remains is the adverse entries in the annual confidential reports for the years 1975-76 and 1977-78. In the year 1975-76 the Additional Chief Engineer had recorded "he did not put his heart and soul to work". In the year 1977-78 the Reporting Officer had recorded "he is callous towards accounts and audit and does work in field erectically splitting up work without competent authority". The countersigning officer made the following remarks :

"During the period of report, he had committed a lot of financial irregularities which could have been avoided and he did not apply his mind at work."

These remarks relate to the period when the appellant was posted as Executive Engineer. Thereafter he was promoted as Superintending Engineer in May 1978, and in 1984 he was promoted as Chief Engineer (Irrigation). As regards compulsory retirement from service the legal position is well settled :

"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 an 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 such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority."

(See : *Baikuntha Nath Das & Anr. v. Chief District Medical Officer, Baripada & Anr.*, [1992] 2 SCC 299, at pp. 315-316)

In the instant case, after the remarks were made in the confidential reports for the years 1975-76 and 1977-78 the appellant had been promoted on the post of Superintending Engineer in the year 1978 and thereafter Chief Engineer in 1984. It has been pointed out that in respect of years prior to 1975-76, in the year 1976-77 and in the years subsequent to 1977-78 the performance of the appellant was appraised as "good". In these circumstances, we are of the view that the adverse remarks in the annual confidential reports for the years 1975-76 and 1977-78 referred to above, by themselves, cannot sustain the opinion leading to the compulsory retirement of the appellant on the basis that further retention of the appellant in service was not in public interest. We are, therefore, unable to uphold the order of compulsory retirement dated March 5, 1986 and the same has to be set aside.

The date of birth of the appellant is April 26, 1933. In the normal course he would have retired on April 30, 1991 after attaining the age of superannuation of 58 years. As a result of the quashing of the order of compulsory retirement dated March 5, 1986, the appellant has to be treated to have continued in service till April 30, 1991 and for the purpose of pension and other retiral benefits the pay should be fixed as on April 30, 1991 and the pension and retiral benefits payable to him should be computed on that basis. As regards arrears of pay and other emoluments for the period from March 5, 1986, the date of the order of compulsory retirement, till April 30, 1991, the date of his attaining the age of superannuation, we are of the view that having regard to the facts and circumstances of the case the appellant should be paid 50 per cent of the pay and emoluments payable to him for this period.

In the result, the appeal is allowed, the judgment of the Tribunal dated September 28, 1987 is set aside and the order dated March 5, 1986

for compulsory retirement of the appellant from service is quashed. The appellant will be treated to have continued in service till April 30, 1991 for the purpose of pension and other retiral benefits. His pay shall be fixed as on April 30, 1991 and pension and other retiral benefits payable to him shall be computed on that basis. For the period from March 5, 1986 till April 30, 1991 the appellant shall be paid 50 per cent of the pay and emoluments payable to him. The said amount as well as the arrears payable to him on account of revision of pension and retiral benefits shall be paid to the appellant within a period of three months. There will be no order as to costs.

Appeal allowed.