

STATE OF ORISSA AND ORS.

A

v.

RAM CHANDRA DAS

MAY 8, 1996

[K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAIK, JJ.]

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Service Law:

Orissa Service Code :

Rule 71(a)—Compulsory retirement—Assistant Conservator of Forests in Government of Orissa—Compulsorily retired from service—Officer allowed to cross efficiency bar and was promoted prior to the order of compulsory retirement—Held, Government servant was allowed to cross efficiency bar to enable him to avail the benefits to draw higher scale of pay after crossing the efficiency bar—Adverse remarks are made after promotion—It is not for the Court/Tribunal to see whether the decision of Government to compulsorily retire the Government servant is justified or not—Government is required to consider entire record of service and take a proper decision—Merely because a promotion has been given after adverse entries were made, cannot be a ground that compulsory retirement could not be ordered—Self same material after promotion may not be taken into consideration only to deny the Government servant further promotion, but that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the Government servant in service after he attained the required length of service or qualified period of service for pension.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9023 of 1996.

From the Judgment and order dated 18.7.92 of the Orissa Administrative Tribunal in O.A. No. 340 of 1987.

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R.M. Bagai, C.S. Ashri and Raj Kr. Mehta for the Appellants.

Vinoo Bhagat for the Respondent.

The following Order of the Court was delivered :

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A Leave granted.

We have heard learned counsel on both sides.

This appeal by special arises from the judgment and order passed by the Orissa Administrative Tribunal in O.A. No. 340/87 on July 18, 1992.

B The respondent while working as Assistant Conservator of Forests was compulsorily retired from service by proceedings dated August 1, 1983 which came to be challenged by the respondent in the above proceedings. The Tribunal allowed the application on three grounds: (1) the respondent was allowed to cross the efficiency bar; (ii) since he was promoted, after
C the adverse remarks were made, the records were wiped out; and (iii) the entire record and overall consideration thereof was not done and, therefore, the exercise of the power of compulsory retirement under Section 71(a) was not valid in law. The question is: whether the view taken by the Tribunal is correct in law? It is needless to reiterate that the settled legal
D position is that the Government is empowered and would be entitled to compulsorily retire a Government servant in public interest with a view to improve efficiency of the administration or to weed out the people of doubtful integrity or corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. But the Government, before taking such
E decision to retire a Government employee compulsorily from service, have to consider the entire record of the Government servant including the latest reports.

Rule 71(a) of the Orissa Service Code empowers the Government to do the needful and reads as under:

F "Rule-71(a) - Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a Government Servant, except a ministerial servant who was in Government service on the 31st March, 1939 and Class IV Government servant,
G is the date on which he or she attains the age of 50 years subject to the condition that a review shall be conducted in respect of the Government servant in the 55th year of age in order to remain in service up to the date of the completion of the age of 50 years or retired on completing the age of 55 years in public interest."

H A reading thereof would indicate that the Government has been

empowered, in the public interest, to compulsorily retire a Government servant on his attaining the age of 50 years or on completion of 55 years by review of the service record. A

It is seen that though the respondent has contended that neither the entire record of service was placed before the Review Committee, nor the Committee had gone into, nor had the advantage of it; and it considered only the adverse remarks for the years 1980-81 and 1981-82 in the rejoinder affidavit filed in this Court, it was specifically stated that the entire record of service from 1964-65 to 1981-82 and also the pending proceedings in the departmental enquiry against the respondent were placed before the Review Committee and the same were duly considered by it. It is also seen that when the case was argued before the Tribunal, the copy of proceedings and report of the Review Committee and record was produced. The Tribunal had also noted in para 5 of the order thus : B C

"Learned Government Advocate produced before us a copy of the proceedings of the Review Committee meeting held on 8.6.83. On perusal of the same, we find that the Committee perused the C.C.Rs., entries of the applicant and took consideration the allegations against him in the departmental proceedings on charges of misuse of powers, suppression of facts, etc. which were pending enquiry before the Administrative Tribunal on the basis of the aforesaid materials, the Committee felt that continuance of the applicant in Government service would not be in public interest and, therefore, they recommended that he should be prematurely retired." D E

It is contended for the respondent that adverse entries for the two years referred to earlier and pending departmental proceedings would not be sufficient to compulsorily retire the Government servant on the premise that after promotion they would become irrelevant and minor penalty was imposed. It is true that the Government servant was allowed to cross the efficiency bar to enable him to avail the benefits to draw higher scale of pay after crossing the efficiency bar. The adverse remarks made are after promotion. Even otherwise, the remarks form part of service record and character role. The record of enquiry on conduct also would be material. Though minor penalty may be imposed on given facts and circumstances to act of misconduct, nevertheless remains part of the record for overall F G H

- A consideration to retire a Government servant compulsorily. The object always is public interest. The material question is: whether the entire record of service was considered or not? It is not for the court/tribunal to see whether the decision of the Government to compulsorily retire the Government servant is justified or not. It is for the Government to consider the same and take a proper decision in that behalf. As stated earlier, it is settled law that the Government is required to consider the entire record of service. Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsorily retirement of the Government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that self-same material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the Government servant in service after he attained the required length of service or qualified period of service for pension. It is also made clear that in this case adverse entries were made only after promotion and not earlier to promotion. Compulsory retirement is not a punishment. He is entitled to all the pensionary benefits.
- E Under these circumstances, we are of the considered view that the Tribunal was wholly unjustified in interfering with the decision to retire the respondent compulsorily from service on the aforesaid grounds.

The appeal is accordingly allowed but, in the circumstances, without costs.

F R.P.

Appeal allowed.