

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL ;**

**NAGPUR BENCH ; NAGPUR.**

**ORIGINAL APPLICATION NO. 368/2002**

Shri Murlidhar Shreepatrao Ghungrud,  
Police Head Constable, B.No.1480,  
Police Head Quarter , Nagpur. Building No. 10/16  
4<sup>th</sup> floor , Police  
Line Takali, Katol Road,  
Nagpur.

-----**APPLICANT.**

= Vs =

1. State of Maharashtra,  
Through : Secretary,  
Home Department,  
Mantralaya, Mumbai.
2. The Commissioner of Police,  
Nagpur Division, Nagpur.
3. The Joint Commissioner of Police,  
Nagpur.

-----**RESPONDENTS.**

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1. Shri T.B. Golhar , Advocate for the applicant.
  2. Shri S.C. Deshmukh, Presenting Officer for the Respondents.

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**CORAM :** HON'BLE SHRI JUSTICE A.P. DESHPANDE : VICE-  
CHAIRMAN

&

HON'BLE SHRI B. MAJUMDAR : M ( A )

**DATE** : 14/1/2013

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ORDERPER: VICE-CHAIRMAN

Shri T.B. Golhar, the ld. counsel for the applicant and Shri S.C. Deshmukh, the ld. P.O. for the respondents.

2. The applicant joined the Police Department as a Police Constable in the year 1970. In his entire service career, he had earned one promotion to the post of Naib Police Constable sometime in the year 1994. After the applicant completed 30 years of qualifying service, he was served with a notice of premature retirement under Rule 65 (1) (b) of the Maharashtra Civil Service ( Pension ) Rules, 1982 by the Commissioner of Police- the Controlling Authority, dt. 5/5/2001 informing the applicant that the applicant shall stand prematurely retired on expiry of a period of 3 months. It is undisputed that the notice of premature retirement served on the applicant is in conformity with Rule 65 (1) (b) of the Pension Rules.

3. The applicant approached the State Govt. by preferring an appeal against the notice of premature retirement and during the pendency of the appeal, the operation of the notice was stayed and the applicant was continued in service. The State Govt. dismissed the appeal and hence the Joint Commissioner of Police, Nagpur by communication dt. 6/3/2002, prematurely retired the applicant from service. It is this action of premature retirement resorted to by the respondents under Rule 65 (1) (b) of the Pension Rules that has been challenged by filing the present O.A.

4. According to the Id. counsel for the applicant, the entire service record of the applicant was unblemished and his work was praised by his superiors. The applicant had earned a promotion to the post of Naib Police Constable in the year 1994. Thus it is submitted that without considering the entire service record the action impugned is taken. An affidavit-in-reply has been filed by the respondents stating

therein that during the service tenure of the applicant, he was saddled with twenty eight punishments including four punishments in the last five years. It is the case of the respondents that the service rendered by the applicant was far from satisfactory and the action of premature retirement has been taken against the applicant with a view to chop off the dead wood. It is categorically the case of the respondents that after completion of 30 years of qualifying service, the R/2 issued a memo to the applicant on 3/4/2001 and directed him to appear before the Review Committee on 9/4/2001. The Review Committee considered the entire service record of the applicant with more emphasis on last 5 years' service record and came to the conclusion that the applicant's services are ~~not~~ required to be discontinued in public interest and accordingly the Review Committee recommended that the applicant should be retired prematurely. Acting on the report of the Review Committee, the Commissioner of Police, Nagpur

has proceeded to issue a notice under Rule 65 (1) (b) of the Pension Rules.

5. The law on the point is very much settled inasmuch as the entire service record with more emphasis on the last 5 years need to be considered. Un-communicated adverse reports can also ~~to~~ be looked into. Reliance is placed on the judgment reported in 1996 II CLR 202 in the case of Sukhdeo-Vs- The Commissoner, Amravati Division, Amravati. The Id. counsel for the applicant has placed reliance on the judgment of the Supreme Court in case of State of Punjab -Vs- Gurdas Singh reported in 1998, S.C.C.

The principles laid down by the Supreme Court in the case of Baikuntha Nath Das-Vs/ Chief District Medical Officer, Baripada and Another ( 1992-I-LLJ-784 ) are reproduced in para 34 and relied upon. The same reads thus :-

“ 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 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."*

*Same view was again affirmed in another Three Judges Bench judgment of this Court in Posts and Telegraphs Board and Anr. -Vs-C.S.N.Murthy( 1993-II-LLJ-866)".*

6. The next judgment relied upon by the ld. counsel for the applicant is reported in 2001 3 SCC, 314 in case of State of Gujarat -Vs. Umedbhai M. Patel. In the said case, the

employee was made to retire prematurely despite the fact that the Review Committee had not recommended his compulsory retirement. Applying the settled principles in the peculiar facts of the said case, as it was found that premature retirement was resorted to as a short cut, the Supreme Court has quashed the impugned order challenged therein. The Id. counsel for the applicant has placed reliance on the judgment in the case of Baikuntha Nath Das -Vs/ the Chief District Medical Officer, Baripada and Another ( 1992-I-LLJ-784 ) which elaborately lays down the principles to be applied in the matter of premature retirement.

7. In the present case, the Id. P.O. has placed on record the copy of the report of the Review Committee which elaborately goes to consider the service record of the applicant right since the year 1971 till the year 1999. The Review Committee has taken into consideration all objective data in regard to the applicant's service career and found that premature retirement of the applicant would be in public



interest and thus recommended accordingly. The Competent Authority acting on the report of the Review Committee has proceeded to issue notice under Rule 65 (1) (b) of the Pension Rules. We do not find any illegality in the action on the part of the respondents in prematurely retiring the applicant from service. In the result, as there is no merit in the O.A., the same stands dismissed with no order as to costs. The documents are taken on record and marked 'X' for identification.

sd/-

( B. Majumdar )  
Member (A)  
Skt.

sd/-

(A.P. Deshpande)  
Vice chairman