

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.278/2017.

Ramesh Natthuji Bhoyar,
Aged about 56 years,
Occ-Service,
R/o Near S.N. T. College, Ambada Road,
PWD Quarters, Ramtek, Dist. Nagpur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Revenue,
Mantralaya, Mumbai-440 032.
- 2) The Collector,
Nagpur.
- 3) The Sub-Divisional Officer,
Ramtek, Dist. Nagpur.
- 4) The Tehsildar,
Ramtek, Dist. Nagpur.

Respondents

Shri A.P. Chorghade, Ld. Counsel for the applicant.
Shri S..A. Deo, learned C.P.O. for the respondents.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 11th day of July 2017.)

Heard Shri A.P. Chorghade, the learned counsel for
the applicant and Shri S.A. Deo, the learned C.P.O. for the

respondents. This matter is being disposed of on merits with the consent of the parties concerned.

2. The applicant Ramesh Natthuji Bhoyar has challenged the show cause notice dated 4.3.2017 issued by Collector, Nagpur (R.2). This show cause notice is nothing but three months notice whereby it has been directed that the applicant stood retired after expiry of three months period from the date of service of notice. The contents of the notice (P.12) Annexure-I are as under:-

“या अथ या रा या वग्यार मधील वृवतनाह असलेले पद धारण करणाया शासक्य कमळायाला, तो ५५ वषवयाचा झायानंतर लोकहताया टाजे सेवावृ करावे असे समुघत ाधीकारयाचे मत असेल तर या कमळायाला क्रमान तीन महने एवया मुदतीची लेखी नोटस देऊन सेवावृ करयाचा , अशा ाधीकारयाला महारा नागर सेवा (वृवतन) जयम, १९८२ मधील जयम २० या पोटजयम (४) खंड (बी) अवये पूणअधिकार आहे,

आण याअथ पी. रमेश नथू भोयर, शपाई, तहसील कायालय, रामटेक हे ५६ वषवयाचे झालेले आहेत.

आण याअथ लोकहताया टाजे सदरहू पी. रमेश नथू भोयर, शपाई, तहसील कायालय, रामटेक यांना सेवावृ करावे असे माझे मत आहे.

याअथ आता महारा नागर सेवा (वृवतन) जयम, १९८२ मधील जयम २० या पोटजयम (४) खंड (बी) अनुसार मी जिहाधिकार नागपूर यावारे पी. रमेश नथू भोयर, शपाई, तहसील कायालय, रामटेक यांना अशी नोटस देत आहेत क्र,सदरहू, पी. रमेश नथू भोयर, शपाई, तहसील कायालय, रामटेक हे नोटस बजावयाया दनांकापासून सु होणारा तीन महयांचा कालावधी संपयाया लगतनंतरया दनांकापासून शासक्य सेवेतून वृव झाले असे ठरेल.”

3. From the aforesaid notice, it seems that the applicant has been made to retire in the public interest as per Rule 10 (4) (b) of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules'). According to the applicant, the said notice is illegal. Immediately after receipt of the said notice, the applicant filed representation on 22.3.2016 and requested that in case he is made to retire, his family will be starved. It is also stated that the applicant is mentally and physically fit to serve and he has four years to serve as a Peon. The applicant has claimed that the notice dated 4.3.2017 issued by respondent No.2 i.e. Collector, Nagpur be quashed and set aside and the respondents be directed to allow the applicant to continue till he attains the age of superannuation.

4. Respondent No.2 has filed affidavit in reply and tried to justify the order. It is stated that as per Rule 4 of the Pension Rules, the Appropriate Authority can ask any employee to retire after service of three months notice and this right is absolute. The Government has issued Circulars dated 4.3.1986 and 12.5.1986 (Annexures R-1 and R-2) which gives absolute right to the respondent authority to exercise its right. It is stated that the Review Committee considered the applicant's case. The said Review Committee consists of Resident Deputy Collector as Chairman, Land Revenue Deputy Collector and

Assistant Commissioner from the office of Divisional Commissioner, Nagpur as Members. The Committee considered total 57 cases of the rank of Senior Clerk, 18 cases of the rank of Circle Inspectors, 7 cases of the rank of Clerk-cum-Typists, 10 cases of the rank of Driver and 65 cases of the rank of Peons. In its meeting dated 9.2.2013, after considering the case of the applicant, it was decided to retire the applicant compulsorily. The report of Tehsildar, Ramtek under whose supervision, the applicant is serving was also called and the said report is dated 27.4.2017 (Annexure R-4). The Committee also examined confidential personal file of the applicant for the years 2014-2015 and 2015-2016 in which the applicant was found not keeping good behaviour with the superior authority and other colleagues and was negligent to perform the work assigned to him. He was also addicted to vices, used to attend the office under the influence of liquor and, therefore, it was decided to take action against the applicant.

5. The learned counsel for the applicant submits that in order to take action under Rule 10 (4) of the Pension Rules, it is necessary that the Committee shall be of the opinion that it is in the public interest to give notice in writing. He submits that overall record of the applicant should have been considered. The Committee, however, did not consider anything and the impugned order is silent as

to what was the reason. Mere mention is that the services of the employee is not required in the interest of public is not sufficient and there must be some material on record.

6. Action to retire an employee compulsorily was considered in the judgment reported in **Dashrath V/s State of Maharashtra by the Hon'ble Bombay High Court.** The Hon'ble Division Bench of the Bombay High Court has carved out essential ingredients of the rule in para 12 of the judgment and they are as under:-

1. That the member of the service must be gazetted government servant.
2. He had entered the service before attaining age of 35 years.
3. That the member of the service must have completed 30 years of qualifying service or the age of 50 years.
4. That the Government had an absolute right to retire the Government servant.
5. That the order must be passed in the public interest.
6. That three months previous notice in writing shall be given or three months pay and allowance in lieu of such notice.

Further the Division Bench also stated important principles to be noted in the matter of compulsory retirement in para 13 of the judgment and they are:-

1. compulsory retirement is not a punishment and does not involve stigma.
2. It is a sole prerogative of the Government.
3. Speaking order is not required.
4. Uncommunicated adverse remarks can be taken into consideration.
5. Principles of natural justice do not apply.
6. The order must be in public interest.
7. The Review Committee shall have to consider the entire report of the service of the concerned employee before taking any decision in the matter attaching more importance to record and performance being of the later year.+

7. In para 16 of the said judgment reported in case of **Rajhans V/s State of Maharashtra 1995 ICLR 100**, it has been observed that the power of compulsory retirement conferred under the rule is discretionary power to be used cautiously. It is to be exercised with extreme care where public interest is likely to suffer. In view of this observation, it is necessary to consider as to what order has been passed by the competent authority in this case and whether the ingredients as aforesaid have been considered.

8. In the impugned order, it has been mentioned as under:-

“आण याअथ लोकहताया ँटने सदरहू पी. रमेश नथू भोयर, शपाई, तहसील कायालय, रामटेक यांना सेवाजवृ करावे असे माझे मत आहे.”

9. The aforesaid para shows that the competent authority i.e. the Collector, Nagpur was of the opinion that it will be in the public interest to retire the applicant compulsorily. It is not known from the said order as to whether the competent authority came to the said conclusion or not or what material was placed before the Committee in this regard.

10. Report of the competent committee is placed on record at page Nos. 53 to 55 (both inclusive). In the said minutes of the committee, the reason for compulsory retirement of the applicant is mentioned as, “कष पूण करत नसयाने मुदतपूर्व सेवाजवृकीकृता नोटस बजावयाची शफारस करयात येत आहे.”

11. It is material to note that in the minutes of the meeting, it is nowhere stated that it was necessary to retire the applicant in the public interest. On the contrary, in para 2, it is mentioned as under:-

५५ व ५६ या कर्मचाऱ्यांच्या वयाच्या ५५ या वर्षां करावयाच्या पुनर्वसूचनांसाठी वाहता करण्यात आलेल्या शारदक मते, जवघाद सचोटी व "चांगला" पैकी कमी नाही असा अभिलेख हाच जकष यांच्या अहवालाकार सेवेची ३० वर्षांपूर्वी होते वेळी करावयाच्या पुनर्वसूचनांसाठी वाहता करण्यात आलेला आहे.

12. Thus, it cannot be said that the Committee considered the fact that premature retirement of the applicant was necessary in the public interest.

13. In reply affidavit, respondent No.2 has stated that the Tehsildar, Ramtek has submitted a letter stating that he had examined confidential file of the applicant for the years 2014-2015 and 2015-2016, in which the applicant was found to be involved in not keeping good behaviour with the superior authority and his other colleague employees and was found to be negligent in performing the work assigned to him. It is also stated that the applicant was addicted to vices and attend the office under the influence of liquor. I have carefully gone through the report submitted by Tehsildar, Ramtek which is at Annexure A-5 from which it seems that the Tehsildar, Ramtek examined only two years A.C.Rs of the applicant i.e. for the years 2014-2015 and 2015-2016. There is absolutely no evidence on record to show that the applicant was remaining absent without obtaining leave or that he used to attend the office under the influence

of liquor. Had it been the fact that the applicant was doing so, departmental action should have been taken against the applicant or at least some show cause notice should have been issued to him in this regard.

14. The respondents have placed on record the copies of the A.C.Rs of the applicant for the years 2014-2015 and 2015-2016, though it is mentioned that behaviour of the applicant was not good and that he was in the habit of avoiding work. In both the A.C.Rs, it is stated that the applicant was eligible to be promoted as per seniority.

15. As already stated, it was necessary for the competent authority to mention that the decision was taken in the public interest and that the Review Committee should have considered the entire service report of the employee before taking any decision. Merely considering two yearsq A.C.Rs cannot be said to be sufficient.

16. From the discussion in foregoing paras, I am therefore satisfied that the Committee has not considered the aspect of public interest in the case of the applicant and it has also not considered the overall service record of the applicant. The respondents could not place on record any documentary evidence to show that the applicant used to attend the office under the influence of liquor or that he was not behaving properly with his official colleagues

and the superior authority. The order of compulsory retirement therefore seems to be passed without proper application of mind and, therefore, the same is not legal and proper. Hence, the following order:-

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order dated 4.3.2017 issued by Collector, Nagpur whereby the applicant has been made to retire compulsorily after expiry of three months period from the date of service of notice is quashed and set aside.
- (iii) Respondent No.2 is directed to reinstate the applicant with immediate effect.
- (iv) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)