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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1062/2001

New Delhi, this the 26th day of September, 2002

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri M.P. Singh, Member (A)

Shakti Trivedi
B-25, Gulmohar Park
New Delhi-110049

.. Applicant

(Shri S.C.Luthra, Advocate)

versus

Director General
Indian Council of Agriculture Research
Krishi Bhavan, New Delhi

.. Respondent

(Shri C.Badrinath, Advocate)

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Shri M.P. Singh, Member (A)

The only short question that needs determination in the present OA is whether or not the action of the respondent in prematurely retiring the applicant w.e.f. 4.1.90 under the Provision of FR 56 (j) is justified.

2. The applicant had earlier filed OA No.2215/1990 challenging the order dated 4.1.1990, which is also impugned in the present OA, retiring him compulsorily with immediate effect under FR 56(j) and the memo dated 11.4.1990 rejecting his review petition. That OA was disposed of by this Tribunal vide its order dated 31.7.1997 in the following terms:

"13. Under the circumstances the OA partly succeeds. Without interfering with impugned order dated 4.1.90 (Annexure I) in any way at this stage, the impugned memorandum dated 1.4.90 (Annexure III) rejecting applicant's representation against his compulsory retirement is quashed and set aside. Respondents are directed to reconsider applicant's representation by a Representation Committee

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constituted in accordance with the Rules and instructions on the subject, and thereafter dispose of that representation in accordance with Rules and instructions within four months from the date of receipt of a copy of this judgement, after giving applicant a reasonable opportunity of being heard in person in which he may be given liberty to raise the additional grounds raised in the OA but not contained in his representation. No costs."

In pursuance of the above directions of the Tribunal, a Representation Committee was constituted to review the case of the applicant. The Representation Committee in its meeting held on 16.3.1999 decided not to interfere with the earlier order dated 4.1.1990 whereby the applicant was retired from service under FR 56 (j). The Committee while taking this decision had observed that the function of the review at the age of 50/55 years is basically to remove the deadwood, the lack lustre performance of the applicant except few years during his service career seems to have been done fairly and impartially taking overall picture into account. The respondent has accordingly passed order dated 26.3.1999 stating that the earlier decision to retire the applicant under FR 56 (j) was in order. Aggrieved by this, the applicant has filed this OA seeking direction to quash the orders dated 26.3.1999 (Annexure A1) and 4.1.1990 (Annexure A2) and has sought further direction to treat the applicant in service from 4.1.1990 in the grade of T-8 till the date of normal retirement with all consequential benefits.

3. The applicant was compulsory retired from service as per the provision of FR 56 (j), which reads as follows:-

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"(j) Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:

- (i) If he is, in Group 'A' or Group 'B' service post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;
- (ii) in any other case after he has attained the age of fifty-five years;"

4. Since the facts of the case have already been discussed in depth in Tribunal's order dated 31.7.1997 in applicant's earlier OA 2215/1990, we do not deem it necessary to re-discuss the same again. However, after hearing the learned counsel for the parties at length and perusing the pleadings available on record, we have noticed the following irregularities committed by the respondent in prematurely retiring the applicant by the impugned order dated 4.1.1990:-

- (i) The aforesaid provisions of FR 56 (j) and Para II (i) of the Appendix 10 of CCS(Pension) Rules, 1972 prescribes the time schedule to review the cases of premature retirement. The date of birth of the applicant being 4.1.1936, he was to complete 50 years on 4.1.1986 and review for premature retirement ought to have been done in July-September, 1985 by the Screening Committee but in applicant's case, review was done after 4 years of due date.
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(ii) Again as per FR 56(j), the appropriate authority can retire a government servant either by giving him a notice of not less than 3 months in writing or three months' pay and allowances in lieu of such notice. Admittedly, in the instant case, neither any notice of three months was given to the applicant nor his salary for three months was paid to him simultaneously. Thus the order of compulsory retirement is faulted.

(iii) The representation committee erred in holding that there was no bar in taking up the review even after 50 years. As per rules, if no review had been done before 50 years of age by the government, an employee gets a further lease of 5 years and the next review can only be done at the age of 55 years and not at the age of 54 years as has been done in the case of applicant.

(iv) Para II (3) (c) of OM dated 5.1.1978 issued by MHA contains instructions relating to premature retirement which reads as follows:-

"While the entire service record of an officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years, or where he has been promoted to a higher post during that 5 years' period, his service in the highest post, has been found satisfactory."

Admittedly the applicant was promoted from grade T-7 to the grade T-8 w.e.f. 1.1.84 on the basis of his performance from 1.1.79 to 31.12.83. If his performance

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was unsatisfactory, he could not have been promoted on 1.1.84. Therefore having regard to the instructions contained in para II (3) (c) mentioned above, the applicant could not have been retired prematurely.

(v) In the counter reply filed by the respondent to applicant's earlier OA 2215/1990, it was stated that "the applicant's compulsory retirement has been recommended by the Review Committee on the basis of his performance after taking into consideration his CRs and also keeping in view the fact he is involved in a criminal case of moral turpitude'.

Though there is no bar to institute disciplinary proceedings on the basis of the criminal charge, respondent chose to invoke FR 56(J) on the above basis, when the fact remains that on the basis of the same performance the applicant was recommended for promotion to the grade of T-8. Thus, there is no doubt that the respondent has adopted short cut method to prematurely retire the applicant at the age of 54.

5. In so far as irregularity mentioned in para 4 (ii) above is concerned, we are supported in our view by the judgement of Madras Bench of the Tribunal in A. Muthuswamy and others Vs. The Divisional Personnel Officer, Southern Railway, Madurai and others 1987(1) SLR

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6. In so far as irregularity mentioned in para 4 (iii) above is concerned, we are supported in this position by the decision of the Apex Court in State of UP Vs. Chandra Mohan Nigam (AIR 1977 SC 2411). In this case, it has further been held that a procedure cannot be violated to the prejudice of an employee. Applicant's counsel has also brought to our notice the decision of this Tribunal in A.B.Sen Vs. UOI (1989 (4) SLJ CAT 917) by which the order of compulsory retirement was quashed on the short ground that review was not done according to the schedule. In our considered opinion, the respondent has adopted a short cut method to avoid a regular inquiry on a specific charge of mis-conduct. (see M.M.Shah Vs. UOI 1991(18) ATC 155 Ahmedabad).

7. No doubt the order dated 26.3.99 rejecting the appeal of the applicant is a detailed and speaking one. But the fact remains that the premature retirement of the applicant by order dated 4.1.90 suffers from the irregularities as explained above.

8. In the result, we allow this OA and we hold that the impugned order dated 4.1.90 is bad in law and deserves to be set aside. We do so accordingly. With this, the order dated 26.3.99 rejecting the representation of the applicant is also quashed and set aside.


9. But for the order dated 4.1.90, applicant ought to have retired from service w.e.f 31.1.96 on attaining the age of superannuation, his date of birth being 5.1.1936. The respondent is, therefore, directed to treat the


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applicant in service upto 31.1.1996 and grant him all consequential benefits including arrears of pay and allowances & retiral benefits.

10. There shall be no order as to costs.


(M.P. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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