CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA No. 1999/98

New Delhi, this the 27th day of May, 1999

HON'BLE SHRI S.R.ADIGE, VICE CHAIRMAN (A)
HON'BLE SHRI T.N. BHAT, MEMBER (J)

In the matter of:

Shri D.S.Sodhi, aged about 55 years
S/o Shri C.S.Sodhi
R/o 5/617, Lodhi Colony,
New Delhi-110003. .... Applicant
(By Advocate: Sh. C.B.Pillai)

Vs.

1. Union of India through
The Secretary
Ministry of Home Affairs,
North Block, New Delhi.

2. The Director,
Central Bureau of Investigation
3rd Floor, CGO Complex, Block No.3,
Lodhi Road, New Delhi-110003.

3. Dr. S.R.Singh,
Director Incharge
Central Foreinsic Laboratory,
Block No.4, CGO Complex,
New Delhi. .... Respondents
(By Advocate: Sh. V.S.R.Krishna)

J U D G M E N T

By Hon'ble Shri T.N.Bhat, Member (J)

The applicant who joined the Central Forensic Laboratories, New Delhi as a Laboratory Assistant in the year 1968 and subsequently came to be selected and appointed as Scientific Assistant in the same organisation has filed this OA assailing the order of compulsory retirement passed by the respondents against him. A three months notice for compulsory retirement was served upon him on 3.7.98 and acording to the notice the applicant would stand compulsorily retired prematurely w.e.f. 31.10.98.

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2. The main ground agitated by the applicant is t the order of compulsory retirement is not only malafide and arbitrary but is also not in public interest. In this regard, the applicant has alleged malafides on the part of Resp. No.3 on the ground that the applicant had complained against him and others for having indulged in corrupt practices. Another plea raised by the applicant is that FR 56 (J) would be applicable at the age of 57 years as the age of Central Government employees had been enhanced from 58 years to 60 years and that the impugned order passed when the applicant had attained only the age of 55 years would not be valid. It is further contended that the impugned order has been passed in contravention of the guidelines on compulsory retirement issued by the Government of India vide OM dated 5.1.78, as the applicant's representation has not been disposed of till the date of filing of the OA despite the lapse of 2 months and 12 days.

3. It is admitted by the applicant that it is his way of life to highlight malpractices/corrupt practices of his superior officers and he had made complaints against the Director Incharge, namely, Resp. No.3 herein and other persons and thereby earned their displeasure. According to the applicant it was as a consequence of this that Resp. No.3 initiated the action which eventually culminated in issuance of the impugned notice of compulsory retirement.

4. The applicant seeks to draw support for his allegation of malafides from the fact that he has been repeatedly suspended from service, though according to him

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without any justification. This Tribunal was, therefore, required to "lift the veil" to find out the real background and intention behind the "drastic punishment of compulsory retirement", the applicant would contend.

5. It appears that the applicant had preferred an appeal against the notice of compulsory retirement but according to him the same had not been decided/disposed of till the date of filing of this OA.

6. The respondents have in their counter replies vehemently denied the applicant's claim that he has put in 30 years of "spotless service". The respondents have averred that the entire service career of the applicant is "beset with repeated adverse remarks concerning his non-performance and non-commitment to official work". The respondents have further taken the plea that according to the provisions of FR 56 (j) the appropriate authority has the power to retire any Government servant in public interest by giving him notice after the employee attains the age of 55 years.

7. Vehemently denying the allegations of malafide, the respondents have stated that the decision to compulsorily retire the applicant was taken by a committee constituted for this purpose which considered his case and found that it would be in public interest to retire the applicant. According to the respondents this committee of highly placed persons included the Director, CBI; the Joint Director (Policy) and the Joint Director (Admn.). This decision, according to the respondents, was taken after the committee followed all the criteria laid down by

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the Government. The committee examined the entire service record including the ACRs of the applicant, more particularly the ACRs of the last 5 years, which were taken into account to arrive at the decision that was eventually taken.

8. The respondents have given the details of the entries in the applicant's ACRs and have stated that according to those entries the applicant had been consistently performing "abysmally below par and had been inefficient and negligent in his official duties" and also lacked competence. The ACRs contained the remarks that the applicant lacks seriousness of purpose and commitment to the work assigned to him. The respondents have averred that several opportunities had been given to the applicant to improve his performance but to no avail. A close scrutiny of ACR dossiers of the applicant reveals that the same contains repeated adverse remarks pertaining to his unsatisfactory work and indisciplined behaviour and those adverse remarks had been communicated to him from time to time.

9. According to the respondents the major penalty of reduction of pay by four stages had also been imposed upon the applicant for a period of one year in the year 1992.

10. It is admitted by the respondents that the applicant had misbehaved with his superior officers in writing complaints against them and sending them directly to higher echelons in the Government without caring to process those complaints through proper channel. In this

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regard the respondents have stated that from 1973 to 1997 about 270 such frivolous complaints against the senior officers of the CFSL and CBI had been sent by the applicant and/or at his instance by other persons using pseudonyms.

11. The applicant has filed rejoinders to the counter replies filed by the respondents in which he has taken the plea that the composition of the committee for considering the applicant's case for compulsory retirement was contrary to the rules and this fact by itself vitiates the whole exercise.

12. A further plea taken by the applicant in the rejoinder is that no standing arrangement for reviewing of the cases of the different categories of employees has been made by the respondents. It is further denied by the applicant that he was informed about the adverse remarks in his ACRs or was given any opportunity to explain his side of the case.

13. We have heard at length the learned counsel for the parties and have perused the material on record. We have also perused the departmental records furnished by the learned counsel for the respondents.

14. During the course of his arguments the learnee counsel for the applicant retierated the contentions made in the OA. However, he did not dispute the correctness of the proposition that the scope of judicial review in such matters is very limited and if there is some material, as distinct from no material, on

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the basis of which the decision for retiring a Government employee has been taken it would not be open to the Court/Tribunal to substitute its own view for the views expressed by the competent authority. We have gone through the ACR dossiers relating to the applicant and find that there are many adverse entries against the applicant and his superior officers right from the beginning do not appear to have favourably commented upon his work and conduct. More importantly, the ACRs of the last 5 years of the service immediately prior to the issuance of the impugned notice can be said to be so adverse as to validly form the basis of an order for compulsory retirement.

15. Take, for example, the ACRs commencing from 1975. In that ACR against the Column sense of responsibility the reporting officer has given the remarks "unsatisfactory". There is a further mention that the officer had been placed under suspension w.e.f. 7.8.75 for lack of discipline. The ACRs of 1976, 1977 and 1978show that the applicant continued to remain under suspension and eventually he was removed from service after enquiry which order was passed on 26.10.78. Subsequently, it appears, that the applicant was reinstated. However, in the ACR fo 1979 he has been graded as "Fair only" and it is further mentioned that an enquiry concerning indiscipline is in progress against the applicant.

16. Similarly, in the year 1980 he has again been graded as "Fair Only" and it has further been remarked that his promotion cannot be considered as an

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enquiry is still pending against him. Similar remarks have been made on the ACR of 1981 and 1982. In the year 1983 and 1984 the grading "Good" has been given to him. But subsequent to that there are again some adverse remarks against him. It has been stated in the ACR of 1985 that no useful purpose would be served by conveying any remarks to him as he has no will to improve and that advice given verbally or in writing had been simply ignored by him. The then Director, CFSL has further remarked that the applicant is of doubtful integrity and that he is not fit for promotion or even retention in service. However, it appears that on the applicant's representation the aforesaid remarks were later expunged.

17. It appears that in 1986 the applicant was again under suspension and a departmental enquiry had been initiated against him. The applicant continued to remain under suspension in 1989 and 1990. In the year 1991 there is a remark that the work of the applicant has been highly unsatisfactory. It is further remarked that the applicant is a worker with no initiative and interest in work. Against the column integrity it has been remarked that it needs watching. The applicant has been graded as "Average" in that year. However, it appears that some of the adverse remarks had later been expunged.

18. The ACR of 1992 shows that the applicant was again under suspension during the aforesaid year and an enquiry had been started against him. In the year 1994 also he remained under suspension. Next year also he remained under suspension. However, it has been stated in his A.C.R. that the applicant had kept himself engaged in

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writing "complaint letters against the officers of CFSL and sending the copies of those complaints to the Ministers" and that the applicant had been warned several times. The applicant has been graded as "Poor" in that year.

19. In the year 1995 the applicant had again been graded as "Average". It has further been stated that the disciplinary authority had imposed the major penalty upon the applicant vide order dated 25.5.95 and that his conduct has not been that of a good Government servant.

20. Having realied that the applicant was not on firm ground in assailing the order of the respondentns retiring the applicant prematurely the learned counsel for the applicant cotended that the respondents have not conducted any review as envisaged under the relevant rules nor have they disposed of the applicant's representation against the impugned order. In this regard the respondents have taken the plea that a regular reviewing committee was constituted which considered the applciant's representation and found no grounds for annuling or modifying or withdrawing the order of compulsory retirement.

21. The learned counsel for the applicant has, however, sought to question the legality of the procedure adopted by the respondents and has in this regard laid much emphasis on the absence of a standing review committee for reviewing the cases of all the employees. It has further been contended that according to the instructions having a bearing on the subject final orders

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on the representations made by the employees who have been retired prematuraly are required to be passed by the appopriate authority after obtaining the approval of the Secretary in the concerned Ministry and such order should be passed within 2 weeks. We have gone throuh the departmental records furnished by the respondents and find that the respondents had constituted a representation committee consisting of a Special Secretary in the Ministry of Home Affairs and a Joint Secretary in the same Ministry who considered the representation of the applicant but rejected the same, upholding the notice dated 20.7.98 issued by Resp. No.2 under FR 56(j) by which the applicant was compulsorily retired from service. We are of the considered view that the rules and instructions on the subject have been substantially complied with and the mere fact that there was no standing committee for the purpose of reviewing such cases and deciding the representations would not by itself be sufficient to vitiate the decision of the representations committee relating to the applicant. We also do not find any merit in the contention that merely because the decision on the applicant's representation was not taken within 2 weeks after obtaining the recommendation from the appropriate committee the decision itself would be rendered invalid.

22. Although a number of judgments were cited at the Bar by the learned counsel for the parties it would be sufficient to refer to just one judgment. This celeberated judgment in the case of Baikunth Nath Das and another vs. Chief District Medical Officer, reported in 1992 (21) ATC 649 lays down in some detail the law on the

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subject of compulsory retirement. All the earlier judgments on the subject have been referred to and explained in this judgment. Although the first principle laid down by the Apex Court in the said judgment is that the opinion of the competent authority regarding compulsory retirement is his subjective satisfaction which has to be formed on the basis of entire record the Apex Court goes on to state in the judgment (supra) that an order of compulsory retirement does not amount to punishment and hence principles of natural justice are not required to be observed in passing an order of compulsory retirement. More importantly, it has further been laid down that judicial review of such an order is open only on the grounds of malafides, arbitrariness, and perversity. As already mentioned, the impugned order is based upon the service records of the applicant and the subjective satisfaction of the competent authority in this case cannot be held to be perverse or arbitrary. As regards the same being malafide we may mention that according to the respondents, the applicant has worked under Resp. No.3 only for a short period while the adverse remarks against the applicant in the ACRs were in existence much before the said respondent took over as Director, CFSL. That apart, Resp. No.3 could have hardly any major role to play so far as the screening committee or the review committee are concerned. We find ourselves in agreement with the contention of the learned counsel for the respondents that so far as the Director, CFSL is concerned he was comparatively a small fry whose views on the subject would hardly be sufficient to tilt the balance one way or the other.

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23. We may also state that Resp. No.3 has filed his personal affidavit denying all the allegations of malafies levelled against him by the applicant, and we have no reasons to disbelieve him.

24. The learned counsel for the applicant has also sought to assail the impugned notice on the ground that the respondents had failed to constitute the screening committee at the appropriate time so that it could take a decision a few months prior to the applicant attaining the age of 55 years. it has also been contended that according to the rules and instructions the process for reviewing the cases of all such employees who are attaining 55 years of age is required to be initiated several months in advance. Although we do find that according to the instructions on the subject there is a requirement to initiate such matters a few months before the employees attain the age of 55 years yet we do not consider it to be a sufficient ground which would go to the root of the matter if the time schedule is not strictly adhered to. In the instant case the time gap between the decision to retire the applicant and the date of his attaining 55 years of age is about 17 days or so. We are of the considered view that this would not constitute a contravention of the instructions so as to vitiate the impugned notice.

25. The learned counsel for applicant has further urged before us that the adverse remarks upon which the impugned notice of compulsory retirement is based had not been communicated to the applicant, and therefore, this was also a ground vitiating the action of

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the respondents. A similar plea had been raised before the Hon'ble Supreme Court in Baikunth Nath Das (supra) and the Apex Court held that 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. It has further been observed that in such matters the action under FR 56(j) need not await the disposal of representations against adverse remarks. The Apex Court also observed that not only the review committee is generally composed of higher and responsible officers but also is the power vested in the Government alone and not in a minor official. It is, therefore, unlikely that adverse remarks over a number of years would remain uncommunicated and yet they would be made the primary basis of action.

26. On the question as to whether the principles of natural justice would be attracted in cases of compulsory retirement the Hon'ble Supreme Court answered this question in the negative and held that an order of compulsory retirement is not a punishment nor does it imply stigma and, therefore, the principles of natural justice have no place in such cases. It was further observed that as the function of the competent authority in such matters is not quasi-judicial in nature and depends upon the subjective satisfaction of the Government there can be no room for importing the audi alteram parten rule of natural justice in such a case. It was further observed that although this does not mean that judicial scrutiny is excluded altogether the Court can interfere only if it is satisfied that the order is passed

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(A) malafide or (B) that it is based on no evidence (C) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material. As already held by us hereinabove, the impugned order is neither malafide nor based upon no evidence. The impugned order also is not arbitrary.

27. In view of the detailed discussion above we find no grounds to interfere with the impugned notice of compulsory retirement. The same is upheld and the OA is dismissed as being devoid of merit.

27.5.99.

(T.N. BHAT)
Member (J)

(S.R. ADIGE)
Vice Chairman (A)

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