

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(19)

O.A No. 1414/2000
T.A No.

Date of Decision 22-5-2001

Sh. K. Lal, IAS

..Petitioner

Sh. G.D. Gupta & Premod
Gupta

..Advocate for the Petitioner(s)

Versus

Union of India

..Respondent

S/Sri VSR Krishna
Rao & Singh Jain

..Advocate for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Hon'ble Shri Govindan S. Tampr, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

GOVINDAN S. TAMPR
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1414/2000

New Delhi, this 22nd day of May 2001

Hon'ble Smt. Lakshmi Swaminathan, VC(J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri K. Lal, I.A.S.
Commissioner cum Secretary,
Government of Himachal Pradesh,
12/Type-V, Kusumpati,
Shimla
Himachal Pradesh

.....applicant
(By Sh. G D Gupta and Pramod Gupta, Advocates)

Versus

1. Union of India
through the Principal Secretary
Department of Personnel and Trg.
Govt of India, New Delhi
2. State of Himachal Pradesh
Through its Chief Secretary,
Government of Himachal Pradesh,
Shimla, Himachal Pradesh

.....Respondents.
(By S/ Shri V.S.R. Krishna, Advocate for Res. No.1
and Randhir Singh Jain, Advocate for Res No.2)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A)

Challenge in this O.A. is directed against the order
F. No. 25013/3/2000-AIS(ii) dated 17.7.2000, passed by Govt
of India, Ministry of Personnel P.G., & Pension, Deptt of
Personnel and Training, which reads as under:-

"In exercise of the powers conferred by Sub
rule 3 of Rule 16 of the All India services
(Death-cum-Retirement Benefits) Rules, 1958,
the President in consultation with the
Government of Himachal Pradesh, hereby
requires Sh. K. Lal a member of the Indian
Administrative Service, borne on the cadre of
Himachal Pradesh, who has already attained 50
years of age, to retire from service in public
interest with immediate effect."

2. A cheque for a sum approximate to the
aggregate amount of his pay and allowances for
a period of three months is enclosed.

3. By order and in the name of the
President."

Sd/-
Director.

2. The operation of the above order has been kept in abeyance by the ad-interim direction of this Tribunal issued on 28.7.2000.

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3. Heard learned counsel for both sides - Shri G.D. Gupta along with Sh. S.K. Sinha for the applicant and S/Shri V.S.R. Krishna and Randhir Jain for the respondents i.e. Union of India and the Govt. of Himachal Pradesh respectively.

4. The arguments canvassed by Sh. G.D. Gupta, learned counsel on behalf of the applicant are summarised as below:

- i) the applicant, born in 1943 and borne on Indian Administrative Service, Himachal Pradesh Cadre, had 27 years of unblemished record of service, with no adverse remark ever having been communicated to him.
- ii) his performance in the job was creditable enough to earn for him promotions from time to time as well as deputation with the Central Govt. and participation in Conferences abroad.
- iii) in 1993, when he was about to complete 50 years of age and his case was due to come up for review, in terms of the relevant rules he was promoted to the super-time scale of I.A.S. w.e.f. 8.7.1991 testifying to his meritorious and distinguished service. No further review was permissible.
- iv) between 1993 and 2000, no fresh material has been brought out on record to show that the officer has suffered in efficiency integrity or reputation so as to make him a "dead wood", justifying his compulsory retirement.
- v) while it is proved that he was placed under suspension twice - from 09.2.93 to 22.7.93 and from 10.4.94 to 24.11.97- the orders of suspension were revoked on both the occasions by the respondents themselves.
- vi) two criminal proceedings and one Departmental enquiry have been initiated against him. Charges have been framed against him in one of the criminal cases.

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The proceedings in those cases are not held up on account of any delay caused by him. Still, the weapon of compulsory retirement has been used against him, as a short cut instead of completing the proceedings in law.

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vii) respondents have pointed out as the reasons for his retirement three instances of alleged instances of misconduct, which had taken place long ago and had been enquired into and closed as being of no relevance. This smacks of vindictiveness and hostility towards the applicant.

viii) the procedure adopted by the respondents was faulty and improper. They had not acted in consonance with the instructions issued by the Govt. from time to time or the various judicial pronouncements on the subject.

ix) following are among the few decisions which lay down the law on the subject which the respondents have failed to abide by:

- a) Union of India Vs Shaik Ali AIR 1990 SC 450
- b) Ram Ekbal Sharma Vs State of Bihar 1992(6) SLR 673
- c) State of Gujrat Vs Suryakant Chunilal Shah (1998) 5 SLR 740/7 and
- d) State of Gujrat Vs Umedbhai M Patel - JT. 2001(3)SC-223

x) since 22.4.1999, when he was asked to hand over charge as Commissioner-cum-Secy. Man Power Planning he had been on Compulsory wait till July 2000, when the impugned order of compulsory retirement has been served on him.

In the above circumstances, it would be clear that the applicant has been dealt with in a hostile, discriminatory and arbitrary manner by the respondents and their action deserved to be set at nought, argues Sh. Gupta, learned counsel.

5. Fiercely contesting the above pleas, Sh. V.S.R. Krishna, learned counsel on behalf of Union of India, urges the following grounds:-

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- i) review in terms of rule 16(3) of AIS (Death cum Retirement Benefit) Rules, 1958 is provided for in public interest, in the case of an officer belonging to an All India Service, once he completes 30 years of qualifying service, or 50 years of age or on any date thereafter. This cannot be questioned.
- ii) Government has a responsibility to ensure that high standards of efficiency and integrity are maintained in the premier Civil Service of the Country. It cannot countenance, in the interests of the country at large, the fair name of the service being tarnished by men of doubtful integrity, who have also outlived their utility for the organisation. The exercise of review is undertaken in this regard.
- iii) it is not one or two stray instances in the career of an individual officer, which come up for scrutiny in the review but his career as a whole and the impression the officer has created in the service, in the cadre and among general public.
- iv) what was required in a case like this, was for the Review Committee to come to a considered opinion, and for that matter, a bonafide opinion, as to whether the continuance of a particular officer in service was in consonance with the
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pronounced objectives and mission of the service and once such an opinion has been formed and the Review Committee records the findings that the officer concerned was not fit to be continued in service, such a decision has to be given effect^h and it cannot be assailed.

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v) respondents have gone through the proceedings in a correct, regular and impartial manner, fully adhering to the law and instructions on the subject and there was therefore no ground to interfere with the same.

vi) The action of the respondents was clearly covered by the law laid down in the following judicial pronouncements :-

i) Baikuntha Nath Das and Anr Vs Chief Medical Officer Basipada & Anr (JT 1992 (2) SC 1)

ii) Union of India Vs J N Sinha - (1970) 2 SCC 458 and

iii) State of UP Vs Chandra Mohan Nigam (1977) SCC (L&S) 535

Shri Krishna, submits in the above circumstances, the impugned order had to be fully endorsed and the application dismissed as being devoid of any merit.

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6. Sh. Randhir Jain, learned counsel for State of Himachal Pradesh, who adopted the pleadings of Sh. V. G.R. Krishna states that the entire proceedings have been gone through by the respondents properly and the decision arrived at by the Review Committee was the only correct and logical decision which could have been arrived at in the circumstances of the case. The applicant's continuance would have brought considerable damage to the fair name and reputation of the service and cadre and hence the decision. Tribunal cannot and should not intervene in the matter except at the cost of efficiency and integrity of the services prays Shri Jain, learned counsel.

7. Shri Jain, learned counsel also placed before us the relevant records i.e. Minutes of the meeting of the Review Committee which led to the impugned decision compulsorily retiring the applicant along with the ACR folder of the applicant.

8. We have carefully deliberated on the rival contentions and perused the documents brought on record. Consolidated Instructions have been issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training vide their letter No.25013/12/86-AIS-II dated 31.7.1987, communicating guide-lines for review of records, in terms of Rule 16(3) of the All India Services (DCRB) Rules, 1958. The same rely upon certain observations of the Hon'ble Supreme Court in the case of Union of India Vs M.E. Reddy and Anr. AIR1980 SC: 563), which among others are as below:

- i) the object of the Rule is to weed out the "dead wood" in order to maintain a high standard of efficiency and initiative in the State Services.

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- ii) Compulsory retirement contemplated by the aforesaid rule is designed to infuse the administration with initiative.....So as to meet the expanding needs of the nation which require exploration of "fields and pastures new".....

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the above instructions go on to State that an officer of All India Services is expected as time goes by to become more effective, more result oriented, a better leader, a better head of a team, a better manager of men and women, more creative, more innovative and more devoted to the service of the people. He/she should always uphold highest standards of integrity without making even the smallest of compromises. What is expected is that, as one rises in the service he/she should be both feared and respected for maintaining absolute integrity. These instructions also have been interpreted in a number of decisions by the Hon'ble Apex Court and High Courts some of which have been relied upon by both applicant and the respondents. Various authorities who have to give effect to the above have also adopted their guide-lines in this regard.

9. We have as stated above perused the proceedings of the Committee on Review of IAS Officers under Rule 16(3) of IAS (DCRB) Rules, 1958, held on 21.1.2000, which considered the case among others of the applicant. Following are the guide-lines of the Deptt. of Personnel & Training, which literally form the preface of the proceedings.. These are enumerated below:-

- "(a) Review of records of officers for premature retirement under Rule 16(3) may be done, keeping in view two broad objectives. Firstly, to weed out Officers of doubtful integrity and secondly to weed out officers who have outlived their utility and have become inefficient or ineffective.
- (b) In every review, the entire service record should be considered. The expression service record would include apart from the ACRs dossier, the personal files of the officer.

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- (c) Entries in the CR dossier relating to integrity should be taken into account by the Review Committee even if not communicated to the officers.
- (d) The cardinal principle to be kept in view is that the higher the level reached by a Govt. servant, the higher will be the responsibilities entrusted to him and hence higher will be the expectation of Government that these responsibilities are discharged with exemplary competence, efficiency and effectiveness.
- (e) While the entire service record of an officer should be considered at the time of review, greater emphasis will be placed on his performance during the 5 years preceding the review.
- (f) No officer should ordinarily be retired from service if he would be retiring on superannuation within a period of one year from the date of consideration of his case. However, this shall not apply in case of officers with doubtful integrity.
- (g) In case the State Civil Service officers appointed to an All India Service by promotion or by selection, the review may be undertaken after they complete at least 5 years service from their appointment to the service.

It is expected therefore that the impugned order should pass the test by the above guidelines.

10. Relevant portion of the proceedings of the Review Committee, concerning the applicant are reproduced below:

"K. Lal

The officer was appointed to IAS on 28.7.73, the officer was reprimanded verbally as well in writing during his probation period for mis-behaving with fellow lady officer, a lady Doctor and two Nurses while attached for training in Kangra. The Officer was chargesheeted for amassing wealth disproportionate to his known sources of income and he was placed under suspension w.e.f. 09.02.1993 to 22.7.1993 by the State Government. He was chargesheeted for major penalty by the Government of India, Department of Personnel & Training vide Memo No.107/13/96-AVD-I, dated 03.10.1996. Again he was placed under suspension vide Order No.Per(APOA-B(14)2/96, dated 22.4.1996 w.e.f. 10.4.1996 to 24.11.1997

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on allegations of offering a bribe of Rs.30,000/- to the CBI Inspector at Delhi. The CBI has also registered F.I.R. against the officer in the above two cases. No departmental enquiry could be conducted as the matter is under investigation with the CBI. In addition the following facts were noticed while examining his service records:-

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- (i) A complaint was made by Shri K.L. Tadu, the then Parliamentary Secretary regarding misbehaviour by the officer. The officer was verbally warned by the then Chief Secretary on 6th September, 1976.
- (ii) The Officer converted to Muslim Religion and taking the garb of Muslim personal law, sought permission to contract second marriage. However, the permission for contracting second marriage while having a living spouse, was not allowed by the Government. Soon thereafter complaints regarding his getting married to another lady started pouring in.

Enquiries were entrusted to Divisional Commissioner, Shimla and Divisional Commissioner, Mandi. The Divisional Commissioner, Shimla vide his report dated 13.11.1984 concluded that "It appears that Shri Lal has known Ms. Shashi Prabha for the last many years when he was still unmarried, and that he is having a continuing and persistent affair with this lady even after his marriage to Mrs. Archana Lall. Such conduct, especially on the part of a Government servant holding a responsible position, is deserving of reproach. However, in view of their denial and in the absence of any other evidence, it is difficult to conclude with any reasonable degree of certainty that Shri Lal and Ms. Shashi Prabha are formally married to each other, although, having regard to the fact that Ms. Shashi Prabha had given herself out to be the wife of Shri Krishan Lal in a communication to her office, the possibility can not be completely ruled out".

Divisional Commissioner, Mandi in her report observed that even though the relationship of Ms. Shashi Prabha with Shri K.Lal is proved by their own admission and other corroborative facts including a General Power of Attorney given by Ms. Shashi Prabha to the bank where in Ms. Shashi Prabha has been shown as wife of Shri K.Lal, Ms. Shashi Prabha and Mrs. Archana Lall, about the marriage the solemnisation of marriage could not be established.

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Although the allegations of contracting second marriage by the officer could not be conclusively substantiated, yet the enquiry reports do create doubt/suspicion about second marriage.

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Besides, Shri K.Lall, who was nominated for one week compulsory training programme in IIMA at Ahmedabad from 30.10.1995 to 03.11.1995, was supposed to duty till 13.11.1995. The officer was asked to explain the reasons for his un-authorised absence from HQs, from 06.11.1995 to 13.11.1995. After considering his explanation he was warned to be careful in future.

In view of the facts narrated above, the Committee recommends that Shri K.Lall may be retired prematurely under rule 16(3) of AIS (Death cum Retirement Benefits) Rules, 1958."

Perusal of the above makes it clear that the Review committee has come to the decision to prematurely retire the applicant on the basis of three issues which are pending - One charge sheet issued for major penalty proceedings and two FIR registered by the CBI - in addition to three acts of misconduct which had taken place quite a few years ago, which had been enquired into and in respect of which corrective action has been ordered. That being the case, the applicant's plea that he was being penalised on the one hand on stale matters and on the other premature retirement has been resorted to as a short cut in preference to finalising the proceedings which are pending is not rebutted. Obviously the respondents have taken recourse to easier of the measures, but that is not what they were expected to do.

11. We have also gone through the ACR folder of the applicant. Though the entire career profile of the officer sought to be retired should be seen, by the Committee, special reference is to be had for performance as recorded during the five years immediately preceding the review. The review meeting has taken place on 21.1.2000. Obviously

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therefore, the ACRs which have to be particularly seen relate to the reporting years 1994-95 to 1998-1999. We observe that during the above period ACR is available only for one year i.e. 1994-95, when he has been assessed as "Outstanding" by the Reporting Officer and as "Very Good" by the Accepting Authority. No report was written for 1995-96, as the concerned reporting and reviewing officers had demitted office without writing the report. From 10.4.1996 to 24.11.1997, the applicant was under suspension and thereafter he was on leave. No report was therefore written during the years 1996-97 and 1997-98. There is no indication as to why the report for 1998-99 has not been written, though the officer was relieved of his charges and put on Compulsory waiting only from 22-4-1994, in which status he continued till the order of premature retirement in July 2000. In the above circumstances, we perused his reports for five more preceding years on well i.e. from 1989-90, to 1993-94. During this period he is found to have been rated as "Good" in 1989-90 and 1990-91 and as "Very Good" in 1991-92 and 1993-94. In fact in 1991-92 reviewing Officer has improved his categorisation and rated him as "Excellent". There has been neither any resume nor any report during 1992-93. It is also seen that the observations about the applicant in the column in the ACR relating to "integrity" during the whole period do not put him in any unfavourable light.

12. In the above view of the matter, we observe that the procedure adopted by the Respondents, for retiring the individual, was nothing more than a shortcut to get around the proceedings initiated, which have taken quite sometime, still showing no signs of completion, though there is nothing as record to show that the delay in any way was caused by the applicant. This to our mind is not an acceptable situation.

13. We have also had occasion to peruse a number of judicial pronouncements referred to by both sides during the hearing. The thrust of the judgements cited by the respondents - Union of India Vs J.N. Sinha & Anr. State of U.P. Vs Chandra Mohan Nigam and Baikuntha Nath Das and Anr Vs Chief Medical Officer, Baripada and Another. is that compulsory retirement was not a punishment and it did not place any stigma on the person concerned and that the same can be passed, at any time after the Govt. servant completes 50 years of age, if on the basis of the facts brought on record, an honest opinion can be arrived at that a Government servant could be retired in public interest. Violation of principles of natural justice would not vitiate such an exercise. On the other hand, relying upon the decision of the Hon'ble Apex Court in Union of India & Others Vs Shaik Ali, Ram Ekbal Sharma Vs State of Bihar and Another and State of Gujarat and Anr. Vs. Suryakant Chunilal Shah, it is argued for the applicant that there has to be considerable material brought on record, on the basis of which alone an opinion can be formed to retire an individual compulsorily. In the absence of such material brought on record, decision to retire an individual prematurely would amount to arbitrary and colourable exercise of power (and that precisely is what occurred, has occurred in this case, according to the applicant).

14. We further observe that the entire gamut of compulsory retirement has been examined and guiding principles have been laid down in latest decision of the Hon'ble Supreme Court viz. State of Gujarat Vs Umedbhai M. Patel. Relevant portion of the said decision [JT 2001(3)SC 223] are reproduced below:

" 11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarized thus:

- i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
- ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
- iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
- v) Even uncommunicated entries in the confidential record can also be taken into consideration.
- vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
- vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
- viii) Compulsory retirement shall not be imposed as a punitive measure.

12. In the instant case, there were absolutely no adverse entries in respondent's confidential record. In the rejoinder filed in this Court also, nothing has been averred that the respondent's service record revealed any adverse entries. The respondent had successfully crossed the efficiency bar at the age of 50 as well as 55. He was placed under suspension on 22.5.1986 pending disciplinary proceedings. The State Govt. had sufficient time to complete the enquiry against him but the enquiry was not completed within a reasonable time. Even the Review Committee did not recommend the compulsory retirement of the respondent. The respondent had only less than two years to retire from service. If the impugned order is viewed in the light of these facts, it could be said that the order of compulsory retirement was passed for extraneous reasons. As the authorities did not wait for the conclusion of the enquiry and decided to dispense with the services of the respondent merely on the

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basis of the allegations which had not been proved and in the absence of any adverse entries in his service record to support the order of compulsory retirement, we are of the view that the Division Bench was right in holding that the impugned order was liable to be set aside. We find no merit in the appeal, which is dismissed accordingly. However, three months' time is given to the appellant-State to comply with the directions of the Division Bench, failing which the respondent would be entitled to get interest at the rate of 18% for the delayed payment of the pecuniary benefits due to him." (33)

15. It is evident that the circumstances of the instant case are adequately covered by the above observation. Here the applicant has been retired on the basis of three pending proceedings, which are well within the competence and capability of the respondents to complete within a specific time frame. Instead of finalising the same and taking action, as per law, the respondents have chosen the easier alternative of compulsorily retiring the applicant. It is relevant to note that no adverse entry has been recorded in his ACR, especially during the last ten years. Further, even after a case has been registered against him for amassing assets disproportionate to known sources of income, nothing adverse has been noted in the column on his integrity. In the circumstances, we have to conclude that the manner in which the applicant was sought to be retired or the procedure adopted for the same was neither proper or correct. The said order therefore has to be set aside on this ground alone, in view of the instructions on the subject and the decisions of the Apex Court (supra).

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16. In the above view of the matter, the application succeeds and the impugned order dated 17.7.2000, compulsorily retiring the applicant is quashed and set aside. The applicant is deemed to be continuing in service, in view of the ad - interim order of 28.7.2000, which is now made absolute.

17. O.A. is accordingly disposed of. No costs.

(Govindan S. Rampi)
Member (A)

Patwal/

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)