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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1797/2000

Wednesday, this the 1st day of August, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Shri Vinod Lal, IAS
R-585, New Rajinder Nagar,
Ground Floor
New Delhi-60.

..Applicant

(By Advocate: Shri Naresh Kaushik)

Versus

1. Union of India through the Secretary
Ministry of Personnel
P.G. & Pensions,
Department of Personnel & Training,
New Delhi.
2. State of Himachal Pradesh
through its Cheif Secretary
Shimla
3. Union Public Service Commission
Dholpur House,
New Delhi, through its Secretary.

....Respondents

(By Advocate: Shri V.S.R.Krishna)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, M (A):-

Heard the learned counsel at length. The material placed on record has also been perused along with the compilation of ACRs of the applicant as also the departmental file dealing with the proposal for applicant's retirement under Rule 16 (3) of the AIS (DCRB) Rules, 1958.

2. The applicant who is a 1968 batch IAS officer belonging to the Himachal Pradesh cadre has been required to retire from service in public interest vide respondents' letter dated 9.8.2000 (Annexure A-1). A cheque for a sum approximate to the aggregate amount of his pay and

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allowances for three months has also been enclosed with the aforesaid order, impugned by the applicant in the present OA.

3. The prayer made is for quashing and setting aside of the aforesaid order on the ground that the same has been arbitrarily passed and is besides malafide and discriminatory.

4. The contentions raised on behalf of the applicant are that he has worked whole-heartedly and sincerely throughout his service extending to 32 years during which no adverse remarks have been conveyed to him. The respondents have made unsuccessful attempts at imposing the extreme penalty of dismissal on the applicant and having failed therein, they have taken recourse to Rule 16 (3) of the AIS (DCRB) Rules, 1958 providing for compulsory retirement. The impugned order, according to the applicant, casts stigma and is punitive in nature and on this ground also, the same cannot be sustained.

5. The learned counsel appearing on behalf of the respondents disputes the contentions raised by the applicant and submits that the order of compulsory retirement has been passed in public interest keeping in view the serious doubts about the integrity of the officer and having due regard to the low level of efficiency reflected in his performance overall. The applicant, according to him, has been found guilty of unauthorized absence, non-compliance of Government orders and misappropriation of Government funds. Furthermore, the

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entire service record of the applicant is marked by deterioration in his overall performance. The learned counsel also submits that the policy of the Government is to maintain a high standard of efficiency and initiative in public services. The members of the All India Service, like the applicant, who belong to the premier civil service of the country are expected to uphold the highest standards of efficiency and integrity at all times. The service record of the officer, according to the learned counsel, on the other hand, is of an indifferent nature and shows a lack-lustre performance. The applicant has, in the circumstances, been correctly retired by having recourse to the provisions of Rule 16 (3) of the AIS (DCRB) Rules, 1958.

6.. The learned counsel appearing for the respondents has further submitted that the State Government of Himachal Pradesh as well as the Govt. of India have scrupulously followed the aforesaid rule, the procedure and the guide-lines on the subject of compulsory retirement. The service records of the officers of the IAS are required to be reviewed in accordance with the procedure prescribed under Rule 16 (3) of the AIS (DCRB) Rules, 1958 also keeping in view the guide-lines framed thereunder. Thus, the performance of the applicant was first reviewed by the Review Committee set up by the State Government of Himachal Pradesh on 21.1.2000. That Committee, after careful consideration of the matter in accordance with the aforesaid guide-lines, concluded that the applicant was unfit for continuance in service beyond 50 years of age. The aforesaid recommendations were accepted by the State

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Government of Himachal Pradesh, who in turn proposed pre-mature retirement of the applicant. The State Government's recommendation and the aforesaid proposal made by them were thereafter considered by the Civil Services Board (CSB), who concurred in the aforesaid proposal. Thereafter, the Appointments Committee of the Cabinet (ACC) Government of India also considered the matter and came to the conclusion that the applicant needed to be retired compulsorily in accordance with the letter and the spirit of the provisions of Rule 16 (3) of the AIS (DCRB) Rules, 1958. The impugned order of pre-mature retirement was passed on 9.8.2000 and the same came into effect from 11.8.2000, the latter being the date of service of the impugned order on the applicant.

7. We have given our careful thought to the matter and have had occasion also to peruse the compilation of the ACRs of the applicant as also the departmental file on which the proposal of applicant's pre-mature retirement was processed by the Govt. We find that apart from the ACR entries for the entire period of the applicant's service, the respondents have kept in view, inter alia, the following facts and circumstances.

8. The applicant was charge sheeted on 15.9.1990 for a major penalty proceedings containing charges of unauthorized absence, non-compliance of Govt. orders and incurring of irregular expenditure. However, in due course, after taking a lenient view, a penalty of censure was imposed on him. The applicant had then also remained under suspension. In June, 1995, the applicant was again

charge-sheeted for major penalty proceedings for mis-appropriation of Govt. funds and committing irregularities in as many as six cases. Of these, the charges in respect of four cases were substantiated and the State Government decided to impose a penalty of stoppage of two increments and accordingly the proposal was recommended for UPSC's consideration and advice. Later the State Government passed final order in that case by reducing the applicant's pay by two stages as above on 4.8.2000, a copy of which was received in the office of the respondent No.1 on 21.8.2000. On this occasion also, the applicant remained under suspension. Besides the above, the State Government have also kept in view the fact that an amount of Rs.7699/- had become recoverable from the applicant on account of tickets purchased for him by the office of the Resident Commissioner, Delhi in 1996-97. The aforesaid amount was still recoverable from him, when the matter came up for consideration by the State Level Review Committee. Yet another amount of over 1.58 lacs had also become recoverable from the applicant on being pointed out by the Audit. Despite repeated efforts made by the State Government, the applicant had failed to pay the aforesaid amount.

9. On a perusal of the ACR file, we find placed thereon a memorandum dated 9.7.1990 issued by the Ministry of Urban Development, Govt. of India by which the applicant was warned to be more careful in future. The matter related to making of certain appointments by the applicant without following the proper procedure while

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working as Managing Director of a certain State Corporation.

10. Insofar as the applicant's ACR dossier is concerned, the same shows that while the conduct and performance of the officer (applicant) has been adjudged to be satisfactory, more particularly in the initial years of his service, his performance is marked by deterioration in the subsequent years. The same clearly brings out a lack-lustre performance and shows up an officer whose performance at best has been indifferent in various ways. Contrary to his averment, the applicant was adversely judged in 1986-87 for not taking sufficient pains to shoulder his responsibilities and for not displaying sufficient enthusiasm and also for suffering from inertia despite having potential for doing good work. As recently as in 1993-94, he was found to be an average officer. ACR entries in respect of 1990-91, 91-92 and 92-93 are not available as the applicant remained under suspension during the aforesaid period. His ACR entries for 1995-96, 96-97 and 97-98 are also not available. For the years 1999-2000 and 2000-01, the applicant remained without a posting and, therefore, the corresponding entries are also not available. We also did not find the applicant's ACR in respect of 1998-99 nor for the year 1989-90 in the compilation of ACRs made available to us by the respondents. In some of the earlier years also, the ACR entries in respect of the applicant are not available.

11. On a careful consideration of the aforesaid position, we have no difficulty in concluding, in agreement

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with the submissions made by the respondents, that the final picture that emerges is that of an officer who has remained indifferent to work and whose performance has had little to commend itself. Thus, as submitted by the respondents, the applicant was correctly treated as dead wood which needed to be chopped off in order to cleanse public service. Purely on merits, therefore, we find no support for the contentions raised by the applicant.

12. Since the applicant has alleged circumvention of due procedure by the respondents, we have proceeded to glance through the record (departmental file) produced for our perusal. The same shows that the State Level Committee on review of IAS officers under Rule 16 (3) of the AIS (DCRB) Rules, 1958 which considered the case of the applicant, had, inter alia, kept the following guide-lines circulated by the DOP&T in view:-

- 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 the 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 officers.
- c) Entries in the CR dossier relating to integrity

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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.

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At the aforesaid meeting of the State Level Review Committee, the recommendations were made for compulsory retirement not only in respect of the applicant but also in respect of another officer. On consideration, we are clear in our mind that in the facts and circumstances, which we have mentioned in the preceding paragraphs about the work

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and conduct of the applicant, no other decision could have been taken by the State Level Review Committee. We cannot, therefore, find any fault with the recommendations made by the State Level Review Committee. By the same token, further recommendations made by the State Government of Himachal Pradesh and the Central Services Board must also be upheld. The ultimate decision taken by the ACC is, therefore, according to us, wholly in order.

13. The learned counsel appearing on behalf of the applicant has, in order to advance his plea that the impugned orders of compulsory retirement have not been properly passed, placed reliance on Hon'ble Supreme Court's judgement and order dated 27.2.2001 in State of Gujarat Vs. Umedbhai M. Patel, reported in (2001) 3 SCC 314. We have perused the aforesaid judgement and find that the same has dealt with the case of an Executive Manager, who was compulsorily retired before the completion of departmental enquiry and was so retired within two years of his retirement on superannuation. The State Government in that case had contended before the Supreme Court that the order of compulsory retirement was not punitive in nature. In the instant case, the facts and circumstances are altogether different. The applicant in the present OA was compulsorily retired on 9.8.2000 by which time the pending departmental proceedings had concluded and the State Government had passed an order imposing major penalty on the applicant on 4.8.2000. Furthermore, in the present case, the applicant, who was born on 6.1.1944, was due for retirement on superannuation on 5.1.2004. Thus, the applicant has been compulsory retired in the present case.

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more than three years before he was due to retire on reaching the age of superannuation.

14. The learned counsel appearing on behalf of the applicant has placed before us an order passed by this very Tribunal on 22.5.2001 in Shri K. Lal, IAS Vs. Union of India & Anr. (OA-1414/2000) in support of his contention that the present OA also deserves to be allowed by following the order passed in the aforesaid case. Shri K.Lal, IAS is also a Himachal Pradesh cadre officer and was compulsorily retired under Rule 16 (3) of the AIS (DCRB) Rules, 1958. We have perused the aforesaid judgement and find that on facts and circumstances the aforesaid case is distinguished. Moreover, the Tribunal has not laid down any principles or guide-lines in the aforesaid judgement.

15. On further perusal of the aforesaid judgement in State of Gujarat Vs. Umedbhai M. Patel's case (supra), we find that the Supreme Court has held that the law relating to compulsory retirement has crystallised into definite principles, which could be broadly summarised thus:-

- "i) Whenever the services of a public servant are no longer useful to the general administration, he 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

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confidential record shall be taken note of and be given due weight 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."

16. The learned counsel appearing on behalf of the respondents has in his counter reply sought to place reliance on Baikuntha Nath Das Vs. Chief District Medical Officer, Baripada decided by the Supreme Court and reproduced in (1992) 2 SCC 299, 1993 SCC (L&S) 521 and (1992) 21 ATC 649 in which case, according to the learned counsel, the following principles were laid down:-

- "(a) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.
- (b) The order has to be passed by the Government on forming the opinion in the public interest on the subjective satisfaction of the Government.
- (c) Principles of natural justice have no place in the context of an order of compulsory retirement and the High Court or the Supreme Court may interfere only if they are satisfied that the order is passed malafide, it is based on no evidence or 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 be a perverse order.
- (d) 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

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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.

(e) 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."

The aforesaid principles have been incorporated by the DOP&T in the guide-lines issued by them under Rule 16 (3) of the AIS (DCRB) Rules, 1958

17. After a careful consideration of the aforesaid principles laid down by the Supreme Court in the aforesaid cases and the guide-lines framed by the DOP&T on the subject, we have not been able to discover any defect in the order passed by the respondents retiring the applicant compulsorily by the impugned order dated 9.8.2000. The impugned orders have not been imposed as a punitive measure and have not been passed, in the circumstances of the present case, as a short cut to avoid departmental enquiry. In consonance with the principles laid down by the Supreme Court and followed by the DOP&T in the guide-lines issued by that Department, we have no hesitation in affirming that the order of compulsory retirement passed in the present case has not been passed by way of punishment and, therefore, the same implies no stigma. The impugned order has clearly been passed in the public interest and on the basis of the subjective satisfaction of the Govt., only after the State/Central Govt. had reached the conclusion in an unbiased and objective manner that the services of

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the applicant were no longer useful to the general administration. We also note that though the principles of natural justice are not required to be followed in passing an order of compulsory retirement under Rule 16 (3) of the AIS (DCRB) Rules, 1958, the Courts may still interfere with such orders only upon being satisfied that the order is passed malafide or else, it is based on no evidence or if it is found to be arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, i.e., in short if it is found to be a perverse order. We have bestowed our careful thought to the aforesaid aspects as well and find that there is no whisper of malafide or arbitrariness in the order passed by the competent authority retiring the applicant compulsorily by the impugned order. Thus viewed, the OA is found to be wholly devoid of merit and deserves to be dismissed.

18. Having discussed the case law as above, we have not considered it necessary to go into the various other decisions of the various Courts and the Tribunal on which reliance has been sought to be placed by the learned counsel for the applicant. Those other cases are all distinguished and the Court/Tribunal's decisions taken therein cannot be made applicable to the facts and circumstances of the present case. The case law emanating from Supreme Court's judgement in Baikuntha Nath Das's case (supra) on which reliance has been correctly placed by the respondents in the present OA and which was noticed by the Supreme Court in Umedbhai M. Patel's case (supra) is the outcome of a decision by a Bench of the Supreme Court

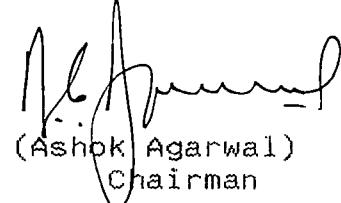
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consisting of three Judges. The learned counsel for the applicant has produced only one more case decided by the Supreme Court by a Bench consisting of three Judges. All the other judgements relied upon by the learned counsel have been delivered by the Tribunal or by the High Court or by the Benches of the Supreme Court consisting of not more than two Judges. The aforesaid three Judges' Bench judgement of the Supreme Court, other than the one delivered in Baikuntha Nath Das's case (supra) was delivered on 19.9.1977, i.e., much before the judgement of the Supreme Court in Umedbhai M. Patel's case (supra). In that case, the appellant was the State of U.P. and the respondent was one Shri Chandra Mohan Nigam & Ors. Shri Chandra Mohan Nigam, an IAS officer was compulsory retired under the Rule 16 (3) of the AIS (DCRB) Rules, 1958. We have perused the aforesaid judgement rendered on 19.9.1977 and find that the same is distinguished. Moreover, by the aforesaid judgement of 19.9.1977, the Supreme Court do not seem to have laid down any principles contrary to the principles laid down in Baikuntha Nath Das's case (supra). Nevertheless, in our view, the principles laid down in Baikuntha Nath Das's case (supra) which have been adopted by the DOP&T in formulating the guide-lines for operating the Rule 16 (3) of the AIS (DCRB) Rules, 1958, and which have been correctly applied in the present case, still holds the field. Having said this, the discussion on case law need not detain us any more.

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19. In the background of the discussions contained in the preceding paragraphs, the OA is found to be devoid of merit and is dismissed. There shall be no order as to costs.


(S.A.T. Rizvi)
Member (A)
(Ashok Agarwal)
Chairman

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