CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No.1171 of 1989.

New Delhi, dated this the 24th of March, 1994.

Mr. Justice V.S. Malimath, Chairman.

Mr. S.R. Adige, Member (Admn.)

Shri Mahesh Gupta,
S/o Late Shri B.R. Gupta,
R/o 209, Dhruva Apartments,
Patparganj, Delhi. ... Applicant.

By Advocate Shri J.C. Singal though none appeared.

versus

Union of India through

1. Secretary,
Railway Board,
Rail Bhawan, New Delhi.

2. General Manager,
North Eastern Railway,
Gorakhpur (U.P)

3. Chief Electrical Engineer,
North Eastern Railway,
Gorakhpur (U.P) ... Respondents

By Advocate Shri S.N. Sikka though none appeared.

ORDER (Oral)

By: Mr. Justice V.S. Malimath.

None appeared either for the petitioner or for the respondents. We waited for quite some time but none turned up. As this is a very old matter, we consider it proper to examine the records and dispose of the case on merits.

2. We have carefully gone through the petition, reply, rejoinder and annexures therein. The case of the petitioner is that he has been compulsorily retired from service by order dated 22.11.88 (Annexure A-2),

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invoking what it is properly called dead wood rule. The impugned order Annexure A 2 which is at page 19 of the O.A. states that the President is of the opinion that it is in ~~the~~ public interest to retire the petitioner from service. The power invoked to compulsorily retire the petitioner from service is under Rule 2046(h) of the Indian Railway Establishment Code (Volume II). The order says that the petitioner has attained the age of 50 years as on 6.1.1987 and that he should be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement in lieu of the notice. The petitioner has challenged this order of compulsory retirement on several grounds.

3. One contention is that the statutory provision under which the impugned order has been made is a non-existent statutory provision. We have already said that what has been invoked is Rule 2046 (h) of the Indian Railway Establishment Code (Vol.II). The petitioner is right in pointing out that this rule was not in existence on 22.11.1988. New statutory rules have come into force to which unfortunately no advertance is made in the impugned order. The corresponding provision of the new Indian Railway Establishment Code (Vol.II) is Rule 1802. The same power which is conferred under old rule has been conferred by the new rule 1802. This is, therefore, a case of mistake committed by the authorities in referring to a wrong statutory provision. It is well settled

that as long as the authority has the necessary power conferred on it under the appropriate statutory provisions, the order passed by the authority which enjoys such power cannot be annulled merely on the ground that it has adverted to a wrong statutory provision. As we are satisfied that Rule 1802 of the new Code corresponds to rule 2046 (h) of the old code, it has to be held that the impugned order of compulsory retirement from service was made under Rule 1802 of the new Code. The conditions for invoking the power are identical. Hence, it is not possible to interfere with the impugned order on this ground.

4. Another contention of the petitioner is that according to the instructions which are in force as guidelines for exercising the power of compulsory retirement, the case of the petitioner should have been reviewed for compulsory retirement under the aforesaid statutory provision before he attained the age of 50 years. The instructions have been issued for properly effectuating the object of the rule to enable the appropriate authority to weed out the Government servants who are no more useful to the administration. That is why this provision is called a 'dead wood' rule which empowers termination of services by compulsory retirement of all those who are not found useful to the public administration. It is well settled that action under such statutory provision is not regarded as punitive action requiring fulfilment

of Article 311 of the Constitution. This rule can be invoked if the Government servant has entered service before attaining the age of 35 years and has attained the age of 50 years. Both these conditions are duly satisfied in this case. It is for the sake of convenience that the instructions provide that the process of review of such cases should be done before six months of the Government servant attaining the age of 50 years. It does not mean that it cannot be done later. The statutory condition is that he should have attained the age of 50 years for taking action. Hence merely because the review was not done before the petitioner attained the age of 50 years and it was done shortly thereafter, the impugned order cannot be rendered ~~as~~ illegal

5. Another contention of the petitioner is that if he was found unfit to be continued in the post he held, the authority should have considered his suitability ~~for~~ the lower post. In this behalf, reliance is placed on para (II)(2) of the instructions contained in Annexure A-14 Railway Board's Confidential letter dated 15.11.1979. Firstly, it has to be said that the instructions cannot override the statutory provisions. The statutory provision contained in Rule 1802 proviso says that the Railway servant who is in a Group 'C' post or service in a substa-ntive capacity, but is holding a Group 'A' or Group 'B' service or post (and had entered Government service before attaining the age of 35 years) in an officiating capacity and in case it is decided to retire

him from the Group 'A' or Group 'B' service or post in public interest, he may be allowed on his request in writing to continue in service in Group 'C' post or service in which he held the substantive capacity.

6. In the reply filed by the respondents, there is a specific averment to the effect that the question regarding continuance in service of the petitioner in a lower post is required to be considered in respect of officers who are officiating in gazetted post but held a post in Group 'C' in substantive capacity. As the case of the petitioner does not fall in that category, he cannot insist on his being considered for continuation in the lower post. There is, therefore, no substance in this claim.

7. It is also the contention of the petitioner that he has been picked and chosen for compulsory retirement for the reason that he was not ready to oblige his superiors by pleasing them in an impermissible way. This is a vague allegation, devoid of any particulars. Hence it does not merit our consideration.

8. It was urged that the adverse remarks were not communicated to him as and when they were recorded and were served to him in a bunch after a couple of years. The Supreme Court has ruled in the matter of taking action for compulsory retirement by invoking the dead wood rule that the adverse remarks if not communicated, will not vitiate the action of the authorities. In this case,

adverse remarks were communicated. The only complaint is that they were communicated belatedly. It may be noted that they were communicated before the impugned order in the case was passed.

9. Another contention in this behalf is that the adverse remarks are vague and not relevant. It is difficult to accede to the contention. The petitioner has produced a copy of the adverse remarks recorded in the Confidential Report as per Annexure A-16, A-17, and A-18. It is stated in the ACR for the year ending 31.3.83 that "he needs to apply harder to the job with a view to improve his initiative and drive." In another ACR for the year ending 31.3.1984 it has been communicated, "poorly. He lacks sense of reponsibility, his application to work is poor and he delays matters"— "... lacking initiative and application to work." In the A.C.R. for the year ending 31.3.1985, it is stated that "he is yet to sincerely apply himself in his present job." These adverse communications, in our opinion, are relevant to assess the petitioner as to whether his continuance in service is in public interest or not. Hence it is not possible to accept the petitioner's contention in this behalf.

10. It is his claim that his case is not properly considered by the authorities and that his representation has also not been examined. These vague allegations have been made by the petitioner in the application. The petitioner has not made out a case by placing any material in this behalf. There is no good reason or ground for

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us to interfere in the matter. So far as the representation is concerned, the same is duly considered and rejected by the President as is clear from the review order made on 1.8.1989, copy of which is produced along with the reply. We do not see any substance in this contention.

11. We see no good ground to interfere. Hence, this application is dismissed. No costs.

(S.R. ADIGE)
MEMBER (A)

(V.S.MALIMATH)
CHAIRMAN

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