

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No.1922/89

Date of decision: 30.4.93.

Mukhtyar Singh

Applicant

vs.

Union of India & ors...

Respondents

CORAM:

THE HON'BLE MR.S.P.MUKERJI, VICE CHAIRMAN(A)
THE HON'BLE MR.J.P.SHARMA, MEMBER(A)

1. Whether the reporters of local papers may be allowed to see the Judgement?
2. To be referred to the reporter or not?

J.P.Sharma
(J.P.SHARMA)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1922/89

DECIDED ON : 30-04-93

Mukhtyar Singh ... Applicant
Vs.
Union of India & Ors. ... Respondents

CORAM :

THE HON'BLE MR. S. P. MUKERJI, VICE CHAIRMAN (A)
THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Shri J. P. Verghese, Counsel for Applicant
Shri B. K. Aggarwal, Counsel for Respondents

JUDGMENT

Hon'ble Shri J. P. Sharma, Member (J) :-

The applicant who was working as Deputy Chief Electrical Engineer, South Eastern Railway, has assailed the order of his compulsory retirement dated 22.6.1989 passed on behalf of the President in exercise of the powers conferred by Rule 2046 (h) of the Indian Railway Establishment Code (IREC for short) Vol. II. The applicant filed an appeal which has also been disposed of vide order dated 27.9.1989.

2. The applicant has prayed for the grant of the following reliefs :-

- (a) To quash the order dated 22.6.1989 served upon the applicant on 13.7.1989.
- (b) A direction to the respondents to reinstate the applicant to the post of Dy. Chief Electrical Engineer (Survey) with all back benefits, salary and perks.
- (c) An injunction to the respondents from giving effect to the impugned order dated 22.6.1989 in any manner whatsoever.

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3. The respondents filed their reply contesting the above application stating that the order of compulsory retirement has been passed in accordance with the provisions of Rule 2046 (h) of the IREC Vol.II. The allegations about malafides in the issue of order are denied. The case of the applicant was reviewed by duly constituted committee and in the light of the recommendations of the said committee and after perusing the entire record of service of the applicant, the competent authority came to the conclusion that it was in the public interest to retire the applicant from service prematurely and that authority passed orders accordingly. In the said review, the entire record of the service of the applicant was taken into account. Thus, it is stated that the application be dismissed.

4. We have heard the learned counsel for the parties at length and perused the record as well as the departmental records showing the proceedings of the review committee and the personal file of the applicant containing the ACRs of the applicant and the report earned by him annually throughout his career on the basis of his performance and work.

5. The learned counsel for the applicant argued that the applicant was promoted to the junior administrative grade w.e.f. January, 1980 and was posted as Deputy Chief Electrical Engineer (Planning) in the headquarters office on 26.2.1980. The applicant was transferred to ^{the} Northern Railway and joined as Senior Divisional Electrical Engineer at Moradabad where he worked from March, 1981 to January, 1985. In January, 1985, the applicant was transferred from Moradabad to Jodhpur and thereafter from Jodhpur to Lucknow and then to Firozepur within a span of three months. He was illegally and unauthorisedly kept under suspension from 13.1.1986 to 13.9.1986. However, the suspension order was ^{revoked} reviewed vide order dated 25.9.1986.

The adverse remarks were communicated to the applicant informing him that his management has not been satisfactory and he was hasty in taking decisions. These remarks were communicated in March, 1980 and 1984. It is the case of the applicant that no other adverse remarks were communicated to him. On the other hand, the applicant was found fit in all respects for holding higher post and was recommended for attending the course for the senior administrative grade from 12.6.1989 to 7.7.1989. It is further alleged that the applicant has been wrongly ^{scared with} submitted a chargesheet dated 29.6.1989 for certain irregularities alleged to have been committed in the year 1985. It is in this context that the learned counsel argued that the respondents with a view to circumvent the regular procedure provided under the G.C.S. (C.C.A.) Rules, 1965 and under the Railway Rules, passed an order ^{ante} dating the same to 22.6.1989 purporting to be under Rule 2046 (h) of IREC Vol. II. The learned counsel for the applicant also argued that the case of the applicant was taken up by the Federation of Railway Officers but the management further got irritated and ~~has~~ passed the impugned order to get rid of the applicant. It is further argued that the applicant was manhandled at Moradabad by the Union officials and members and it was under the ^{influence} ~~inference~~ of the Union officials that the vindictive action has been taken against the applicant. The learned counsel argued that the order of compulsory retirement is arbitrary, malafide and perverse.

6. The Hon'ble Supreme Court in the case of Baikuntha Nath Das Vs. Chief Distt. Medical Officer, Baripada : AIR 1992 SC 1020 laid down certain principles in para 32 of the reported judgment at page 1031. The same ^{are} ~~is~~ quoted below :-

"32. The following principles emerge from the above discussion :

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide, or (b) that it is based on no evidence, or (c) 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.

(iv) 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 importance to record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) 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.

Interference is permissible only on the grounds mentioned in (iii) above. This object has been discussed in paras 29 to 31 above."

7. In another case of Post and Telegraph Board & Ors. vs. C. S. N. Murthy : AIR 1992 SC 1368, the Hon'ble Supreme Court referring to the above quoted judgment of Baikuntha Nath Das ⁱⁿ Das _{concerning} observed that where there was material which showed that the efficiency of the employee was slackening in the last two years of the period under review, the conclusion of the department that compulsory retirement was warranted cannot be ^{faulted} followed as being mala fide, perverse, arbitrary or unreasonable. It was further held that adverse remarks made against the employee in relation to the subsequent year would constitute sufficient

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are different from ^{those} that of the case in hand. The learned counsel for the applicant has also referred to the authority reported in 1990 (2) SCC 328 - C. D. Ailawadi vs. Union of India. Reliance has also been placed on another decision of the Tribunal reported in 1987 ATC (2) 424. In view of the decision in the case of Baikuntha Nath Das (supra) it is not necessary to discuss in detail ^{two} both the above cited cases though in fact the ratio of the Baikuntha Nath Das' case is also the same in the case of C. D. Ailawadi (supra). It is now not open to the aggrieved party to say that the uncommunicated adverse remarks cannot be considered or that the authorities had not observed the principles of natural justice. Thus, on the basis of the above law, the case of the applicant when seen in the right perspective, it transpires that the applicant was retired on the basis of doubtful integrity as well as the certain remarks recorded in the ACRs during the last five years. In the remarks relating to the period ending 12.1.1986 the reporting officer has observed that the integrity of the applicant is under investigation. It is also observed that "he is ruthless in implementing his decision once he makes up his mind. Complaint arose against him on account of over-strictness, overjealous and vocal about interests of SC/ST rights." For the remarks ending 25.1.1985 it is reported that "he annoyed both his staff and the unions, is not tactful, not fit for DMR/DRM." The reviewing authority also observed that "he used political pull to cancel his transfer and he is pro-SC employee". In the year ending March, 1984 it is observed by the accepting officer that "his management is unsatisfactory" and he has been classified as average. For the year ending February, 1983, the reviewing authority communicated that "there have been frequent complaints from unions and his staff some of which involved integrity aspects also." The applicant has also been

upon adversely commented by the accepting officer for the year ending March, 1982 that there have been complaints against him from Staff Supervisors and Unions regarding favouritism and harassment. Besides the above facts, the applicant has faced as many as eight vigilance inquiries out of which one regarding irregular purchases of hand signal lamps on his single quotation basis a penalty was imposed on 5.5.1988. In another vigilance inquiry, which was followed by departmental action on the misconduct of appointment of casual labours without verifying the genuineness of labour cards, the penalty was imposed on 20.1.1988, but it was set aside by the Tribunal on an application filed by the applicant before it on technical grounds of non-supply of inquiry officer's report ^{but} with liberty to the administration to proceed with the inquiry from the stage of supplying of the inquiry officer's report. In another inquiry initiated against the applicant, the displeasure has been conveyed after his compulsory retirement on 22.6.1989. This material was before the screening committee on the basis of which the impugned order was passed. It has been observed that the officer is of doubtful integrity and the high-powered committee endorsed this view of EDV. In the case of State of U.P. vs. Chandra Mohan Nigam : 1977 SLJ 663, considering the provisions of Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958, which corresponds to Rule 2046 (h) IREC, the Hon'ble Supreme Court observed as follows :-

"We should hasten to add that when the integrity of an officer is in question, that will be an exceptional circumstance for which orders may be passed in respect of such a person under rule 16(3), at any time, if other conditions of that rule are fulfilled, apart from the choice of disciplinary action which will also be open to the Government."

9. The contention of the learned counsel for the applicant is that power under rule 2046 (h) of the IREC could be exercised in case where there are no specific acts of misconduct and where there is only room to doubt the integrity of the Government servant concerned. Under rule 2046 (h) IREC, the Government has absolute power to retire a Government servant above 50/55 years of age on grounds of inefficiency/ineffectiveness and/or doubtful integrity, if the competent authority after review of service record of the concerned employee is of the opinion that it is in public interest to do so. We find, therefore, that the screening committee has taken the decision to retire the applicant from service prematurely is not with regard to any specific act of misconduct but it was based on review of his entire record of service.

10. The contention of the learned counsel for the applicant is that there were certain collateral facts which have been considered by the Screening Committee in coming to a decision, namely, the pending disciplinary proceedings against the applicant and other vigilance inquiries. It is not so. When we scrutinised the service record of the applicant and as conceded by the learned counsel for the applicant, the penalty of censure imposed on 5.5.1988 still stands against the applicant and in ^{the} inquiry which has been completed, ^{the} displeasure of the President has been conveyed to the applicant after his retirement in July, 1989.

11. The contention of the learned counsel for the applicant that the order of compulsory retirement is arbitrary, is not substantiated from the record. The respondents have passed the order under the extant rules without considering any misconduct of the applicant, and solely basing their conclusion on the ACRs

as well as the facts concerning the integrity of the applicant. The learned counsel for the applicant also argued ^{that} the order of compulsory retirement is perverse but in the circumstances of the case it cannot be said that a reasonable conclusion cannot be drawn to the same effect as has been reached by the Screening Committee.

12. The learned counsel, however, argued that the action of the respondents is mala fide inasmuch as they wanted to do away with the services of the applicant without proceeding with regular departmental proceedings and adopting a short circuit under the Railway rules. This is not so. There are no allegations of mala fide and only certain collateral facts have been alleged in support of this contention, which is not substantiated.

13. In the light of the above discussion, we find no force in the present application which is accordingly dismissed as devoid of merits. Parties to bear their own costs.

J. P. Sharma
(J. P. Sharma) 30.4.93
Member (J)

S. P. Mukerji
(S. P. Mukerji)
Vice-Chairman (A)

as

Pranam by me

J. P. Sharma
30.4.93