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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.202/89

New Delhi this the 10th day of June 1994.

HON'BLE SHRI N.V. KRISHNAN, VICE CHAIRMAN (A)
HON'BLE SHRI B.S. HEGDE, MEMBER (J)

Dr Chiman Lal
S/o Late Shri Malook Chand,
Retd. Assistant Divisional Med. Officer,
Northern Railway,
DELHI. ....Applicant

Residential Address

1-C/6, New Rohtak Road,
NEW DELHI.

By Advocate: Shri Prem Prakash

VERSUS

Union of India, through
Chairman,
Railway Board,
Ministry of Railways,
Rail Bhavan,
NEW DELHI.

2. The General Manager,
Northern RailwayNorthern Railway,
Baroda House,
NEW DELHI .... Respondents

By Advocate : Shri O.P. Kshtarya

ORDER

HON'BLE SHRI N.V. KRISHNAN, VICE CHAIRMAN (A)

The applicant was an Assistant Divisional Medical Officer in the Northern Railway, under the second respondent. He was retired prematurely in public interest by the Ministry of Railways by the order dated 01.12.1988 **(Annexure A-I)** issued under Rule **2046(h) of the Indian Railways Establishment Code, Volume II.** The applicant is aggrieved by this Order and he has filed his application for setting-aside this Order.

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2. The case of the applicant is that he entered in Railway Service on 13.12.1962 after qualifying in the comptetitive examination and was appointed as Assistant Surgeon in Northern Railway. In 1965, he volunteered for Army Service and w.e.f.6.12.1965 he was released from Railway service. He rendered medical services in the Army till 27.6.1973. He was promoted as an Additional Assistant Divisional Medical Officer in August, 1973 in which capacity he had worked at various places. The applicant states that he had a clean record till about 1981, but, it was spoiled thereafter by the Dr Korwal, Chief Medical Officer, who is unenimical towards him. Therefore, the Confidential Reports for the year 1981-82 were spoiled with a few adverse but vague entries. Similar adverse entries were also recorded for the subsequent years 1983. The representations filed against these entries were rejected. The applicant was the senior most ADMO and was due for promotion but the respondents superseded him vide **Annexure A-12** Orders dated November, 1985 promoting his juniors. Likewise, the applicant has been ignored in the matter of promotion to the senior scale post of Dy Medical Officer for which AMOS were made eligible. **(Annexure A-13).**

3. Further adverse entries were recorded for the year ending13.3.1987 (Annexure *-15). The applicant filed representation against that vide letter dated 10.06.1987 Annexure A-15, remained unanswered, while the impugned Annexure A-5 orders, retiring him with immediate effect was passed.

4. The impugned order is challenged on the following grounds :-

i) The adverse entries for the years ending 31.3.82 31.3.83 and 31.3.87 are not sufficient grounds

for compulsory retirement as this action can be taken only if the Officer is delinquent, inefficient, corrupt or dishonest as dead-wood.

(ii) The respondents have overlooked the other reports which declare the applicant to be good at his work.

(iii) The report of the Review Committee has not been supplied to him.

(iv) Obsolete and stale entries in the record have been looked into, ignoring the other grounds relating to the excellence of his work.

(v) Rule 2046(h) on which reliance is placed does not give any guidelines and hence unbriddled powers have been conferred by the rules and, it is, threfore, ultra vires.

(vi) The rejection of the representation in connection with the adverse entries i.e. Annexure A-11, A-15, and A-17, are non-speaking orders and could not have been depended upon.

5. The respondents have filed the reply contesting these claims.

6. It is stated that the performance of the applicant was unsatisfactory as would be reflected in the character roll for the years ending 31.3.80 to 31.3.88, wherein he has been rated to be average person and not fit for promotion. Adverse remarks were communicated to him for the year ending 31.3.82, 31.3.83 and 31.3.87 and the representations filed by him, were rejected. There was an adverse entry for the year 31.3.1988 also and representation against it were rejected.

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7. It is stated that the case of the applicant was considered by the Screening Committee and thereafter by the Review Committee which considered his record and the impugned order was passed by the competent authority.

8. When the case came up for final hearing, learned counsel for the applicant contended that the impugned order is also invalid because it invokes the provisions of Rule 2046(h) of the India Railways Establishment Manual (IREM) which did not exist on that date. He pointed out that the rules had been revised earlier and the appropriate rule 1802(a) has not been invoked. On this ground alone the impugned order stands vitiated, as held by the Madras Bench of the Tribunal in R. Kulandai Swami Vs Union of India (A.T.R. 1992 (1) CAT 101, to which are one of the parties. He further pointed out that the applicant had submitted a representation in regard to the adverse entries for the year 1988 which has not been considered and the representation was still pending. when the Review Committee met to consider this case. Averments made in the O.A. were reiterated. The learned counsel also relied on the decision of the Supreme Court in AIR 1981 SC-70, & of the Tribunal in ATR 1988 (2) CAT-518.

7. The learned counsel for the respondents submits that the procedure laid down has been correctly followed As the applicant was adjudged to be unfit for further continuance in service in public interest, he was retired by the competent authority. In so far as the wrong mention of the rule is concerned, it is contended that this mistake by itself cannot vitiate the order because this merely amounts to a mistake about mentioning the correct provision of law, & even in the amended rules, the respondents had such powers. And, therefore,

the order cannot be vitiated on this ground alone.

8. We have carefully heard the rival contentions and perused the record. It is true that Madras Bench of the Tribunal has rendered a decision in similar circumstances where the powers under Rule2046(h) have been invoked instead of Rule 1802(a). However, that judgement is distinguishable because the decision therein, was not rendered on the only ground that this irregularity is fatal to the order passed in that case. That O.A. was considered on merit at great length and allowed on the ground that sufficient material was not available for the compulsory retirement. A reference was, no doubt, made to a similar view taken in an earlier O.A.248/89 wherein it was held that a reference to a different rule would vitiate the order of compulsory retirement. Having said so, the Bench further proceded to state that it was not necessary to rest its conclusions on that ground and that it would like to consider the merits of the case. In other words, while there was a reference to an earlier decision rendered by one of the Members of the Bench, that O.A. was not disposed of on that ground. We are of the view that the above judgement of the Madras Bench does not lay down that a mistaken reference to the correct provision of law in an O.A., without much more, indicates that order. In our view this is merely an irregularity. Admittedly, such power is available in rule 1802(a) of the Indian Railway Establishment Code. Therefore this judgement cannot be applied to the present case and, therefore the reliance on the Tribunal's judgement on A.K. Khanna Vs Union of India (ATR-1988 (2) CAT 578) is of no avail-

9. That is also the view held by the Bombay High Court in Jagdish v. Accountant General (AIR 1958 Bombay 283) Para 19 of that judgement reads as follows :-

> "We are clear in our mind that the order of the President, which is reproduced above, was passed by him under his powers under Art.310 of the Constitution. The order on the face of it does not expressly mention the provision under which it was passed. It does not mention that it was passed under Civil Services (Classification Control and Appeal)Rules. There is no reference to any provision of the Rules including rule 52. The nature and scope of the order and the power exercised by the President in passing the said order clearly indicate that it was passed under the constitutional power. The new rule 52 does not give any new power to the President. The new rule 52 can be considered as enacted ex majore cautela - a mere reproduction of the power contained in Art 310. The new Rule 52 places no limitations whatsoever on the President. Comparision of this new rule with the old rule will be relevant at this place. The old rule 52 provided that 'subject to the provisions of these rules' the Governor-General in the Council or a Local Government of a Governor's Province may impose the penalties specified in Clause 6 or in clause 7 on any ssuch person not being one of those referred to in rule 52. The new rule 52 provided as as follows:
>
> "The President may impose any of of the penalties specified in rule 49 on any person who is a member of the Central Service or holds a post in connection with the affairs of the Union."
>
> Previously the Governor-General in Council could exercise his powers relating to these services only subject to the Rules. New rule 52 left the President free to exercise the power without any limitations of the Rules. Therefore, impugned order of dismissal can

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be attributed only to the rules only to the power of the President which he enjoys under Art.310 of the Constitution. It is in consonance with the principles of law that if any action is taken by any authority and if there is a valid provision of law under which such action can be taken, then such action should be attributed to such provision of law. Validity or invalidity of the action would depend on the existence or absence of the power with the authority taking that action. The absence of express mention of the provision of law cannot render the action invalid if it is attributable to a provision of law under which the action could be validly taken." **(Emphasis ours)**

We are in respectful agreement with the views expressed therein.

10. In so far as premature compulsory retirement is concerned, the Supreme Court has considered all the relevant rulings in Bakuntha Nath Das Vs Chief Dist Medical Officer, Baripara (AIR 1992 S.C.-1020) including the decision in Baldevraj Chadha's case (AIR 1981 SC 70) cited by the applicant in which the following principles have been laid down :-

(i) An order of compulosory 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 contest 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 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 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. 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 queashed 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 para 29 to 31 above.

11. We are of the view that is necessary to consider the O.A. only in the light of these principles.

12. Admittedly, no malice has been attributed to the respondents in coming to the conclusion that the applicant deserves to be retired under rules 1802(a). The respondents have produced for our perusal, the original records of the case leading to the compulsory retirement. It is noticed that the case of the applicant was considered in the office of the General Manager by a Committee consisting of the Chief Personnel Officer, Chief Medical Officer & the Senior Dy General Manager. This Committee considered the performance of the applicant along with the cases of three others and recommended that their cases be referred to the Railway Board for premature retirement under Rules 2046 (h). This

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was endorsed by the then General Manager. It is seen that the record for the years ending 31.3.82 to 31.3.87 was examined.

13. This recommendation was then considered by the Railway Board which is the Review Committee. It was pointed out to the Board that as per guidelines laid down by the Board, in the cases of premature retirement of Officers due to inefficient/ineffectiveness the assessment/fitness as reflected in the Annual C.Rs in the preceding 5 years have to be converted into points and the case processed further, applying the following yardsticks :-

i) Officers having 11 points or below are not to be retained in service.

ii) Over 11 points but less than 14, is the grey area.

iii) Officers having 14 and above are to be retained in service, unless the points for the last 3 C.Rs are upto 6 points and below.

It was pointed out that the assessment in the case of the applicant for 5 years gave him only 10 points. His A.C.R. dossier was also placed for perusal. This was considerd by the Committee which agreed that the applicant should be retired prematurely in public interest. This recommendation was approved by the Minister for State for Railways. Thereafter, the impugned order was issued.

14. The character roll of the applicant was also produced for our perusal. The averments made by the respondents in this regard, in their reply are corroborated by the entries in the character roll.

15. In accordance with the principles laid down by the Supreme Court, it is not for the Tribunal to decide on the sufficiency or insufficiency of the material for coming to the conclusion about premature retirement. What is important to note is that the actions are not either arbitrary or malacious. The character rolls for a period of ten years shows that the official has a colourless record which has been graded consistently as average in his performance. He has been found unfit for promotion. In addition, there are a few adverse entries in his character rolls. In the circumstances the decision taken by the authorities cannot be considered to be arbitrary or malacious.

16. We are, therefore, satisfied that the action taken by the respondents cannot be ~~violated~~ questioned and accordingly, we do not find any merit in this O.A. This is dismissed.

(B.S. HEGDE)
MEMBER (J)
Camp Bombay

10/6/94
(N.V. KRISHNAN)
VICE CHAIRMAN (A)

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