

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI**

**O.A. No.** 2249/89  
**T.A. No.**

199

**DATE OF DECISION** 17-11-1994

<u>Shri Kewal Kishore</u>	<b>Petitioner</b>
<u>Shri G. D. Gupta</u>	<b>Advocate for the Petitioner(s)</b>
<b>Versus</b>	
<u>U. O. I. &amp; Ors.</u>	<b>Respondent</b>
<u>Mrs. Avnish Ahlawat</u>	<b>Advocate for the Respondent(s)</b>

**CORAM**

**The Hon'ble Mr. Justice S. K. Dhaon, Vice-Chairman(J)**

**The Hon'ble Mr. B. N. Dhoundiyal, Member(A)**

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

*B. N. Dhoundiyal*  
(B. N. DHOUNDIYAL)  
MEMBER (A)

*S. K. Dhaon*  
(S. K. DHAON)  
VICE CHAIRMAN (J)

(10)

Central Administrative Tribunal  
Principal Bench, New Delhi.

D.A.No.2249/89

New Delhi this the *17th* Day of November, 1994.

Shri Kewal Kishore,  
S/o late Pt. Pathura Dass,  
R/o D-56-A, Fateh Nagar,  
New Delhi.

Applicant

(through Sh. G.D. Gupta, counsel)

versus

- 1: Union of India,  
through the Secretary to the  
Govt. of India,  
Ministry of Home Affairs,  
North Block,  
New Delhi.
2. The Lt. Governor,  
Union Territory of Delhi,  
Raj Niwas,  
Delhi.
3. The Commissioner of Police,  
Police Headquarters,  
I.P. Estate,  
New Delhi.
4. The Addl. Commissioners of  
Police (Operation),  
New Delhi.
5. The Deputy Commissioner of  
Police (P.A.P.),  
Palam Airport,  
New Delhi.

Respondents

(through Mrs. Avnish Ahlawat, counsel)

ORDER

delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A)

The applicant, an ex Sub-Inspector of Delhi Police, is aggrieved by the order dated 22.8.1988 prematurely retiring him on completing 30 years of service, in exercise of powers under Rule 48 of the Central Civil Services (Pension) Rules, 1972.

The applicant was appointed in Delhi Police on 12.10.1953 as Constable and was promoted as Head Constable on 1.11.1961, as Assistant

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Sub-Inspector on 4.7.1970 and as Sub-Inspector on 6.1.1982. He has himself mentioned certain set backs in his service career. While he was working as Assistant Sub-Inspector, he was placed under suspension vide order dated 16.6.1973. The allegation against him was favouring the suspects of a rape case by arresting them under Section 110/112/117 of the Bombay Police Act instead under Sections 363/376 of the Indian Penal Code. While under suspension, he was reverted by an administrative order from the post of Assistant Sub-Inspector to the post of Head Constable. This enquiry resulted in awarding of punishment of reduction in rank to the post of Constable. He filed an appeal before the Commissioner of Police. The Appellate Authority held that his earlier demotion to the post of Head Constable was wrong and modified the order to the extent that he would be deemed to have been reverted from the post of Assistant Sub-Inspector to that of the Head Constable. The applicant has also mentioned adverse entries received by him for the years 1970-1971 and 1971-1972. His contention is that the sting of these adverse remarks was taken away by his subsequent promotion as Assistant Sub-Inspector on 10.05.1976 and as Sub-Inspector on 6.1.1982. The applicant has challenged the impugned order on the ground that it is not based on any material which would be relevant for compulsory retirement, if the above remarks were not

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taken into account. The impugned order has not been passed by the competent authority i.e. the appointing authority which is D.C.P. in his case. The following reliefs have been claimed :-

"i) Quash the impugned order of compulsory retirement from service of the applicant dated 22.8.1988;

(ii) Declare the applicant not liable to be compulsorily retired from service at the age of 54 years and the order of compulsory retirement as wholly illegal and arbitrary;

(iii) Declare the applicant entitled to continue in service upto the age of superannuation i.e. upto the age of 58 years with all consequential benefits;

(iv) Direct the respondents to allow the applicant to continue in service upto the age of 58 years with all consequential benefits, such as, arrear of pay and allowances, seniority,

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promotions, if any, etc. to which he would have been entitled had he not illegally been compulsorily retired from service vide impugned order dated 22.8.1988."

The main averments made by the respondents in their counter-affidavit are these. The applicant was compulsorily retired from service under Rule 48(1)(b) of the C.C.S.(Pension) Rules, 1972 in public interest on the basis of an unsatisfactory record of service. On 25.9.1976 he had been awarded the major penalty of reversion in rank for shielding three accused, who had raped one minor girl aged 12 years. Instead of taking serious and prompt action, he tried to shield the accused and arrested them for a minor offence. He was also given adverse A.C.Rs for the period 1971-1972 and 1972-1973. He was also warned to be more careful on account of absence or carelessness on four different occasions. The competent authority considered his whole service record before passing the order of retirement. It is also claimed that the orders were passed by the competent authority as Rule 4 of Delhi Police. (Appointment & Recruitment) Rules, 1980 lays down that in case of sub-inspector, DCP, Addl. DCP, Principal PTs and any other officer of equivalent rank are the appointing authorities.

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We have gone through the records and heard the learned counsel for the parties. The power to compulsory retire a government servant on completion of 30 years service or attaining the age of 55 years, is contained in Fundamental Rules 56(j). The appropriate authority has the absolute right to retire, if it is necessary to do so in public interest, any Government employee as follows:-

- (i) If he is in Group 'A' or 'B' service or post and has entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;
- (ii) In any other case, after he has attained the age of 55 years provided that in the case of a Group 'D' official, such action can be taken if he entered service after 23rd July, 1966.

Provisions also exist in Rule 48 of the C.C.S. (Pension) Rules, 1972, for the retirement of a Government employee by giving him three month's

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notice, if it is necessary to do so in public interest, after he has completed 30 years of qualifying service for pension. In other words, a Government employee who may belong to Group 'A', 'B', 'C' can be prematurely retired, irrespective of the age at the appropriate time, after he has completed 30 years of qualifying service.

Detailed instructions have also been issued on the subject of premature retirement of Central Government Servants vide Ministry of Home Affairs O.M. dated 5.1.1978 reproduced as Appendix 10 to Swamy's Pension Compilation. The object of these instructions is to ensure that the powers vested in the appropriate authority are exercised fairly and impartially and not arbitrarily. Screening committees and review committees have been constituted in all the departments to consider such cases and the following criteria has been laid down for making recommendations for compulsorily retirement:-

- (a) Government employees whose integrity is doubtful, will be retired.
- (b) Government employees, who are found to be ineffective will also be retired. The basic consideration in identifying such

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employee should be the fitness/competence of the employee to continue in the post which he is holding. If he is not found fit to continue in his present post, his fitness/competence to continue in the lower post, from where he had been previously promoted, should be considered.

(c) While the entire record of an Officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years, or where he has been promoted to a higher post during that 5 years' period, his service in the highest post, has been found satisfactory.

(d) No employee should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case.

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Our attention has also been drawn to the case law on the subject. It was held in Shri Baikuntha Nath Das & Anr. Vs. Chief District Medical Officer, Baripada and Anr. (JT 1992(2) S.C.1) that an order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior. (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 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

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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. These principles were confirmed in Sh. S. Ramachandra Raju Vs. State of Orissa (JT 1994(5) S.C. 459 wherein it was reiterated that the entire service record of the officer, more particularly the latest would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer. In this case it was held on the facts and scrutiny of service record that it was an arbitrary exercise of power and there was failure to take the total record of service into consideration objectively. The Order of compulsory retirement was set aside with costs. It was held in J.D. Srivastava Vs. State of Madhya Pradesh (1984(2) SCR 466 that the adverse reports prior to the promotion of the officer cannot reasonably form a basis for forming an opinion to retire him. The reports relied upon for retiring the appellant were more than 20 years old and there was no other material upon which the said decision could be

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based. It was held that reliance on such stale entries cannot be placed for retiring a person compulsorily, particularly when the officer concerned was promoted subsequent to such entries.

We may now examine in detail the record that was before the screening committee, review committee and the competent authority for arriving at a conclusion that it was in public interest to retire the applicant prematurely. A major penalty of reversion of rank was awarded to the applicant in 1975. As the appellate authority observed his action in arresting accused in a rape case u/s 110,112/117 of B.P. Act was hasty and improper but there was evidence that he had indulged in corrupt practices. The C.R. remarks in 1970-1971 found him honest and smart but mentioned the need for improvement in the detection of local and special law cases and timely submission of case diaries. Somewhat similar adverse remarks were communicated to him for the year 1971-1972. Subsequently he was found fit to be promoted as Asstt. Sub-Inspector in 1976 and Sub-Inspector in 1982. These remarks, therefore, cannot be the foundation of the decision to retire him prematurely in 1988. The record of the applicant for

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the last ten years of his service is summarized below:

	1.4.1988 to 2.8.1988	1.4.1987 to 31.3.1988	1.4.1986 to 31.3.1987	1.2.1985 to 15.5.1985	16.5.1985 to 31.3.1986	1.4.1984 to 31.3.1985
1. Honesty	Honest	Honest	Honest	Honest	No complaint	No complaint
2. Moral Character	Good	Good	Good	Good	Good	Very Good
3. Moral courage and readiness to expose the malpractices of subordinates.	Good	Good	O.K.	Satisfactory	Good	Very Good
4. Reputation for fair dealing with the public and accessibility to the public.	Good	Good	O.K.	Fair & Accessible	Satisfactory	Fair and Accessible
5. Communal impartiality.	Impartial	Impartial	Impartial	Impartial	Satisfactory	Impartial
6. Loyalty to the Govt. in power without regard to political and party feelings.	Loyal	Loyal	Loyal	Loyal to the Govt.	Satisfactory	Loyal to the Govt. in power.
7. Attitude towards subordinates and relations with fellow employees.	V.Good	Fair	Cordial	Good	Satisfactory	V.Good
8. General power of Control and organising ability.	V.Good	Not tested	O.K.	Satisfactory	Average	Excellent
9. Personality and initiative.	Good	Good	O.K.	Good	Average	Very Good
10. Power of Comman.	Average	Not tested	No occasion to test it.	Good	No occasion to test it.	Excellent
11. Reliability	Reliable	Reliable	Reliable	Reliable	Satisfactory	Reliable
12. General Remarks	Retired	Work and Conduct was very good. He is an efficient and dedicated worker.	Work and conduct satisfactory	The work and conduct of the officer is good.	Work and conduct remained satisfactory.	Work and Conduct is very good.

	1.4.1983 to 31.3.1984	1.4.1982 to 31.3.1983	24.6.1981 to 6.1.1982	1.7.1980 to 31.3.1981	1.4.1979 to 11.2.1980	1.4.1978 to 31.3.1979	1.4.1977 to 31.3.1978
1.	No complaint	No complaint	Honest	Honest	No complaint	No complaint	No complaint
2.	Satisfactory	Satisfactory	Good	Good	Good	Good	Good
3.	Satisfactory	Satisfactory	Has got moral courage to expose malpractices of subordinates.	Good	Fair	Fair	Fair
4.	Satisfactory	Satisfactory	Fair	Good	Fair	Fair	Very Fair
5.	Impartial	Impartial	Impartial	Impartial	Impartial	Impartial	Impartial
6.	Loyal	Loyal.	Loyal	Loyal	Loyal	Loyal	Loyal
7.	Cordial	Cordial	Cordial	Good	Cordial	Cordial	Cordial
8.	Satisfactory	Satisfactory	Good	Good	Fair	Fair	Good
9.	Satisfactory	Satisfactory	Good	Good	Very Good	Good	Good
10.	Satisfactory	Satisfactory	Good	Good	Not tested	Not tested	Not tested
11.	Reliable	Reliable	Good	Reliable	Reliable	Reliable	Reliable
12.	The officer remained posted at the immigration checkpost, Palam. His work and conduct were found to be generally satisfactory during the period under report.	During the period under report he worked at the Immigration checkpost, Palam. Work and conduct satisfactory	During the period under report work and conduct remained good.	A good officer Category 'B'.	An obedient and hard working officer. Takes interest in his job.	An intelligent officer who takes interest in his work. Doing very well in the 'Personnel File Section' of Crime Record Office.	An obedient and hardworking officer who is doing very well in the P.F. Section or C.R.O.

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It would be seen that entries related to the last ten years of service range between excellent to satisfactory. His honesty is affirmed in all the CRs and his moral character is invariably termed as good. His courage, communal impartiality, loyalty, attitude towards subordinates, personality and initiative are rated satisfactory or good. He is rated as reliable during all these years. The general remarks are highly commendatory for atleast four years including 1987-1988 and good or satisfactory for the remaining years. We should also take into account that the applicant had been awarded as many as 51 certificates and 21 cash awards. These materials do not therefore justify premature retirement.

The respondents have drawn our attention to get another enquiry initiated in 1988. We have, however, been told at the Bar by the learned counsel for the applicant that after his retirement, no proceedings under Rule 9 of the C.C.S. (Pension) Rules have continued. If we take into account this isolated case of 1988, we have to reach the conclusion that a proper enquiry should have been conducted and the device of premature retirement should not have been resorted to. We are strengthened in our view by the observation of the Principal Bench of this Tribunal in the case of Mohd. Islam Khan Vs. Military Secretary to the President of India and Others (1987 (2) ATC 424) that at times it is clear that in their legitimate enthusiasm to

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maintaining discipline amongst the household staff and to set an example to others the decision to retire the petitioner compulsorily was taken by the respondents not only as a substitute to disciplinary proceedings but a short cut to such proceedings. The impugned order was quashed in that case. The change related to non-attendance in a court case and seems to have been dropped.

Another argument urged by the learned counsel for the applicant is that before passing the order of premature retirement, the possibility of retaining him in a lower post was not considered. Para 6(i) of the memorandum issued by the Ministry dt. 5.1.1978 states that in case "the appropriate authority, after the relevant review, comes to the conclusion that the officer is not fit for being retained in the present post, but could be retained in the next lower post from which he was promoted, a notice in the prescribed form should be served in such a case on the employee retiring him from service in pursuance of the provisions of the relevant rule. Simultaneously, it may be explained to him in a covering letter that his continuance in service beyond the age of 50/55 years after the completion of 30 years of service, as the case may be, could be considered, if he is willing to revert to the lower post held by him previously. In case, he indicates his willingness to work in the lower post and gives a written request for being so reverted he may be

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retained in service and continued in the lower post. There is no whisper of this alternative having been considered either by the screening committee or by the appointing authority. However, as has been held by the Supreme Court in Sardul Singh Vs. Delhi Administration and Another (1991(16) ATC 930 that once the Tribunal quashed the order of compulsory retirement as unsustainable, the only alternative for it was to direct the respondents to ignore that order and to proceed on the basis that the petitioner had continued in service till the date of his normal retirement. At this stage, this option is not available to us.

Another contention of the learned counsel for the applicant was that the impugned order was not passed by the competent authority. He submitted that as per rules 48(3) of the Central Civil Services (Pension) Rules, 1972, the appointing authority means the authority which is competent to make appointments to the service or from the government service to retire. As per Rule 4 of the Delhi Police (Appointment & Recruitment) Rules, 1980, the appointing authority for SIs are (i) DCP (ii) Addl.D.C.P. (iii) (iv) any other officer of equivalent rank under the Delhi Police (Promotion & Confirmation) Rules, 1980 which is the D.C.P. who is the competent authority in respect of SIs. In the present case, the order of compulsory retirement of the applicant had admittedly been issued by Addl. C.P., who happens to be an authority higher than the

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authorities mentioned above. Thus, it cannot be said that the impugned order of compulsory retirement was passed by the competent authority. As held by the Hon'ble Supreme Court in case of Marathwada University Vs. Seshrao Balwant Rao Chavan (AIR 1989 SC 1582) that it is a settled principle that when the Act prescribes a particularly body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. As we have already held that the impugned order is not maintainable on other grounds, we are not called upon to adjudicate on this issue at this stage.

We have carefully considered the various aspects of this case. The award of punishment of reduction in rank and the adverse entries relate to the years before 1971-1972. Thereafter, he was promoted twice; as Assistant Sub-Inspect and then Sub-Inspector. Rule 13(i) of the Punjab Police Rules which were applicable to them provides that promotion from one rank to another, and from one grade to another in the same rank shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Specific qualifications, whether in the nature of training courses passed or practical experience, shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. It is, therefore, clear that atleast twice the appointing authority found that the applicant deserved to be promoted on merit. We

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have already analysed the confidential reports for the last 10 years of the service and we find that all of these are favourable. We are, therefore, satisfied that the impugned order was passed on no evidence and was arbitrary. The impugned order of compulsory retirement dated 21.8.1988 is quashed and set aside. The applicant shall be deemed to have continued in service upto the age of superannuation i.e. 58 years with all consequential benefits including arrears of pay and allowances, seniority, promotion, if due, and recalculation of his pensionary benefits on the basis of such promotions/increments. An Interest of 12% per annum will be paid on all the arrears till the date of actual payment. Necessary orders to this effect shall be issued by the respondents within a period of four months from the date of receipt of a certified copy of this order.

No costs.

*B.N. Dhoundiyal*  
 (B.N. Dhoundiyal)

Member(A)

*S.K. Dhaon*  
 (S.K. Dhaon)

Vice-Chairman(J)

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