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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.2276/1989

New Delhi, This the 23rd Day of May 1994

Hon'ble Mr. Justice V. S. Malimath, Chairman

Hon'ble Mr. P.T. Thiruvengadam, Member (A)

Shri Om Prakash Sharma
Asstt Sub Inspector
2527/Sec.
Delhi Police(Security)
Main Line,
Copernicus Marg
New Delhi.

...Applicant

By Advocate Shri J P Verghese

Versus

1. The Delhi Administration
through its Chief Secretary
Old Secretariat
Delhi.
2. The Commissioner of Police
Police Headquarters
I.P. Estate
New Delhi.

...Respondents

By Advocate Mrs Avnish Ahlawat

O R D E R (Oral)

Hon'ble Mr. Justice V. S. Malimath, Chairman

1. The petitioner Shri Om Prakash Sharma has challenged in this case Annexure III the impugned order dated 30.8.89. The Deputy Commissioner of Police, Security, New Delhi has in exercise of the powers conferred upon him by Clause J(ii) of Rule 56 of the Fundamental Rules or 48 of the Central Civil Services(Pension) Rules 1970 compulsorily retired the petitioner in public interest.
2. The petitioner's main contention is that though the order of compulsory retirement has been

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made invoking clause J(ii) of Rule 56 of the Fundamental Rules or 48 of the CCS(Pension) Rules 1970 the same has not been passed by independent application of mind that it is in public interest to compulsorily retire the petitioner from service. It was pointed out that the recommendation of the Screening Committee which recommended compulsory retirement of the petitioner was approved by a Reviewing Committee headed by the Additional Commissioner of Police. The petitioner's appointing authority being the Deputy Commissioner of Police which is not disputed was one of the members of the Committee. The contention of the learned counsel for the applicant is that as the Review Committee was headed by a superior officer i.e. the Additional Commissioner of Police the Deputy Commissioner of Police would feel bound to accept the opinion of the Review Committee. Therefore the Deputy Commissioner could not have passed the impugned order on the basis of his independent opinion. It is in this context that he urged that the impugned order is vitiated. In support of his contention reliance was placed on the decision of the Principal Bench of the Tribunal in T A 1242/85 and T A 1248/85 between Shri Hoshiar Singh and Shri Surinder Nath Vs U O I decided on 11-9-1987. A similar view has been taken by

another Bench of this Tribunal in O A 1325/88 in Shri Bakshi Ram Vs Lt Governor of Delhi and others which was decided on 22-12-1993. In both these cases it is the Sub Inspector of Police who was compulsorily retired. In both these cases, the Screening Committee which was constituted under the relevant instructions of the Govt was headed by Deputy Commissioner of Police. The Review Committee constituted under the relevant instructions of the Govt was headed by the Commissioner of Police. The competent appointing authority so far as the Sub Inspector of Police is concerned is the Additional Commissioner of Police. Therefore, in both these cases there was no independent application of mind of the appointing authority and hence the compulsory retirement orders were quashed. The Screening Committee was headed by the Deputy Commissioner of Police who is an authority inferior to the appointing authority so far as the Sub Inspector of Police are concerned. Therefore the appointing authority did not exercise his mind at the level of the screening Committee. The appointing authority no doubt was a member of the Review Committee. But the said Committee was headed by Commissioner of Police who is an authority superior to the appointing authority namely the Additional

Commissioner of Police. It is in this background the Tribunal held in those cases that there is nothing to indicate that the appointing authority applied its mind independently without being influenced by the opinion of the superiors. In Shri Bakshi Ram's case the Tribunal has made the following observation:

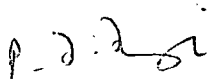
Alternatively, before the matter was placed before the review committee headed by the Commissioner of Police if the Additional Commissioner of Police had, after exercising his independent judgement, taken the view that the applicant should be compulsorily retired in the public interest, and the review committee headed by the Commissioner of Police had confirmed that view, then also the action could not have been called into question."


It is clear from this observation that if the appointing authority has independently applied its mind and affirmed the opinion that the particular Govt. servant is fit for compulsory retirement in public interest, the mere fact that his view was affirmed by the Review Committee headed by a superior officer the order of compulsory retirement passed by the appointing authority would not be vitiated. It is in this background that we have to examine the facts of this case.

3. So far as the present case is concerned the petitioner is an ASI of Police. His appointing authority was the Deputy Commissioner of Police and the impugned order of compulsory retirement was passed by him. The question for consideration is as to whether the appointing authority passed the impugned order after independently applying his mind forming the opinion that in public interest it is necessary to compulsorily retire the petitioner under clause J(ii) of Rule 56 of the Fundamental Rules or 48 of the Central Civil Services(Pension) Rules 1970. The relevant records were placed before us. We find from the same that the petitioner's appointing authority namely the Deputy Commissioner of Police was the Chairman of the Screening Committee, the other members being his sub-ordinates. The Screening Committee examined the cases of 15 persons including that of the applicant and came to the conclusion that the petitioner and other person deserve to be compulsorily retired in public interest. The opinion of the Committee is unanimous which means that the Deputy Commissioner of Police, the chairman of the Committee the appointing authority as also the other members of the Committee were of the same opinion namely that the petitioner is fit to be retired compulsorily in public interest. It is therefore clear that the

appointing authority i.e. the Deputy Commissioner of Police has applied his mind independently and formed the opinion that the petitioner is fit for compulsory retirement in public interest. His opinion which is the same as the opinion of the Screening Committee was affirmed by the Review Committee headed by the Additional Commissioner of Police. The affirmation has ensured greater fairness to the petitioner. Hence it is not a vitiating circumstance. Therefore the impugned order passed under clause J(ii) of Rule 56 of the Fundamental Rules or 48 of the Central Civil Services (Pension) Rules 1970 is not liable to be quashed. Therefore, the DA is dismissed.

No costs.


(P.T. THIRUVENGADAM)
Member(A)


(V.S. MALIMATH)
Chairman

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