

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2478/1989

Date of decision 28-7-1995

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri K. Muthukumar, Member (A)

Shri Som Parkash,
s/o Late Ch. Mangal Singh,
R/O B-2/211, Yamuna Vihar,
Delhi-110053

.. Applicant

(By Advocate Shri G.D. Gupta)

Versus

1. Union of India
through 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. Commissioner of Police (Range),
New Delhi.
5. The Deputy Commissioner of Police,
East District, Delhi

.. Respondents

(By Advocate Shri S.K. Sinha, proxy counsel
for Shri Jog Singh)

O R D E R

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 in which the applicant has challenged the validity of the order dated 22nd August, 1988 compulsorily retiring him from service under Rule 48 of the CCS (Pension) Rules, 1972 on having "attained the age of 55 years or having qualifying completed 30 years of service." The applicant has challenged the order on the ground that the order is illegal, arbitrary and is based on no material and

hence, violative of Articles 14 and 16 of the Constitution.

2. The brief facts of the case are that the applicant was initially appointed in the Delhi Police as Constable on 5th October, 1952. On 2.1.1957, he was promoted as Head Clerk. In the mean time, he was confirmed as constable and confirmed as Head Constable in 1954. He was promoted as Assistant Sub-Inspector on 16.4.1971, confirmed in the post, later promoted as Sub-Inspector on 19th July, 1975 and confirmed in that post on 30th June, 1979. The applicant admits that although he got certain penalties/censure during the course of his service, these could not have been taken into account as per instructions of the Govt. of India contained in the memorandum dated 5.1.1978 (Annexure A-2). The main grounds taken by Shri G.D. Gupta, learned counsel for the applicant are that these Govt. Instructions dated 5.1.1978 have not been followed. His contention is that the Committee constituted under the instructions/guidelines for making recommendations of those employees for compulsory retirement under the relevant rules, and in particular, part II, paragraph (3)(b)&(c) have not been complied with. His submission is that under sub-clauses (b) and (c), in identifying those Government employees who are found to be ineffective and are to be retired, the entire service record of the officer is to be considered at the time of the review and if he was not found ^{fit} to be continued in the present

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post, his fitness/competence to continue in the lower post from where he had been previously promoted, should have been considered which was not at all done in this case. He relies on the judgment of this Tribunal in Sardul Singh v. Delhi Administration & Anr. (1991(15)ATC 520) and the Supreme Court judgment in the same case (Sardul Singh v. Delhi Administration & Anr. - 1991 (16) ATC 930), which has been followed by this Tribunal in Civil Writ Petition No. 1087/84 in T.A. 29/88 Shri G.D. Gupta submits that the Review Committee did not at all consider the applicant for being retained in the next lower post to the post he was holding when he was compulsorily retired which, according to him, ought to have been done as there was no adverse ACR for that period. ^{been} ~~and which~~ is in accordance with para 6(i) of the Memo. dated 5.1.1978. He also claims that since he has never been communicated any remarks from his ACRs and his integrity was also beyond doubt, there was no material on the basis of which the impugned order could have been passed and hence, it was arbitrary and illegal and not in compliance with the Government Instructions.

3. The next ground taken by the applicant's counsel is that the order of compulsory retirement has not been passed by the 'Appointing Authority' as provided under Rule 48(3) of the CCS (Pension) Rules. His contention is that under Rule 3(i) of the Delhi Police (Appointment

and Recruitment) Rules, 1980, the Appointing Authority for a subordinate police officer below the rank of Inspector means the Deputy Commissioner of Police, including the Additional Deputy Commissioner of Police, Principal, PTS or any other officer of equal rank. In this case, the impugned order has been passed by the Additional Commissioner of Police, who is, therefore, not the competent authority as provided under Rule 48(3) of the CCS (Pension) Rules under which he has been compulsorily retired. He relies on Marathwada University v. S.B.R. Chavan (AIR 1989 SC1532) that where a particular body has been prescribed by an Act to exercise a power, it must be exercised only by that body and it cannot be exercised by others unless it is delegated by the law. The applicant's counsel submits that even if the applicant has been placed in the category of persons of doubtful integrity, this cannot be taken as part of his service record and cannot also be relied upon by the respondents to issue the order of compulsory retirement. The applicant relies on the judgments in H.C. Gargi v. State of Haryana (1986 (1) ATC 356), A.N. Saxena, S.L. v. Chief Commissioner (Admn.) and Commissioner of Income Tax (P.B. Delhi (1988 (1) ATR 326, S.R. Sant v. UOI & Ors. (1990 (12) ATC 851), V.D. Gaur v. State of Haryana (Pb. & Hry.) 1991 (4) SLR 932), and N.K. Vij v. State of Punjab (1991 (6) SLR 288). The applicant has also filed a rejoinder in which he has admitted that adverse remarks were, in fact, communicated to him and the facts stated

to the contrary in the O.A. were made by mistake. He further submits that he is not certain whether replies have been given to him against his representation, if any, against the adverse remarks for the year 1974 or against the adverse remarks for the year 1986. His submission is that after his promotion as Sub-Inspector in 1975 the adverse remarks in 1974 are wiped out.

4. The respondents have filed a reply denying the above allegations. They state that the competent authority has ^{validly} exercised the powers conferred on him under Rule 48 of the CCS (Pension) Rules, 1972 and passed the order of compulsory retirement, taking ^{entire} into account his service record. The applicant has completed 30 years of qualifying service on 22.8.1988 and he was retired in public interest after considering his service record. They deny that the applicant was not communicated any adverse ACRs. They have stated that in 1974 and for the period from 1.4.1986 to 11.8.1986 he was communicated adverse remarks in his ACR. They also admit that he had ~~also~~ received some commendation certificates in his service. They ^{following} have also referred to the penalties that had been awarded to the applicant by the competent authority during his service, namely, -

- (1) Censure awarded by S.P. North District, dated 3.10.1967.
- (2) Censure awarded by DCP, East District, dated 19/20.9.1983.

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- (3) Censure by DCP, East District dated 25.4.1986.
- (4) Censure by DCP, East District dated 2.5.1986.
- (5) Censure by DCP, East District, dated 9.7.1986.
- (6) Censure by DCP, East District, dated 13.3.1987.
- (7) Censure by DCP, East District, dated 30.11.1987.
- (8) One year approved service forfeited permanently with cumulative effect vide order dated 25.5.1987.

They have also stated that the representation submitted by the applicant against the impugned order dated 22.8.1988 is still pending.

5. Shri S.K. Sinha, learned counsel appearing on behalf of the respondents, submits that the premature retirement of the applicant has been done after the Screening Committee and Review Committee have considered all his service record in the public interest and there was no violation of the rules. He has also submitted the official record pertaining to the Screening Committee/ Review Committee and the personal files of the applicant for our perusal. Shri Sinha submits that the memo. dated 5.1.1978 issued by the Government and relied upon by the applicant is only in the nature of the guidelines and is not mandatory. He submits ^{that} after looking into the official record of the applicant, the competent authority has come to the conclusion that the applicant was not a fit person to continue in service in public interest and this cannot be faulted. He relies on K. Prasad Rao v. S.D.E.E. (CAT Hyd^{para. 13}) (1994(8) SLR 455.

Dr.M.S.N. Balasubramaniam v.UOI & Ors. (ASLJ 1995 (1)

CAT 198). Regarding the question of doubtful integrity he states that relying on the judgment of the Supreme Court in Baikuntha Nath Das v.Chief Dist.Med.Officer (1992 (2) SLR 2), Manohar Lal v. State of Punjab & Haryana & Anr. (1994) (4) SLR 39) and B.S. Julka v.UOI (1994 (1) SLR 627 (CAT)), since some part of the applicant's record which has been looked into, contains adverse remarks, and his integrity was doubtful, there is nothing to show that the competent authority has acted in any arbitrary or perverse manner. He also relies on the judgments in K.V.Jagannadham v.Secy.to the Govt.of Orissa (1987 (2) SLR 263 CAT Bhubaneshwar) and Gafoor Mia Kansal v.Director, DMRL (1988 (4) SLR 445 CAT Hyd.)

6. We have considered the arguments of the learned counsel for both the parties as well as perused the records in the case, the pleadings and the other relevant files submitted by the respondents relating to the case.

by the Supreme Court

7. It has been held in Baikuntha Nath Das & Anr.v. Chief Dist.Med.Officer, Baripeda & Anr. (1992 (2) SLR SC 1)

that (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 Govt.on forming the opinion that it is in the public interest to retire a government servant compulsorily.(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not, however, mean that judicial scrutiny is excluded

altogether. While the Court or this Tribunal would

not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) malafide 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 that the order is perverse. (iv) The Government or the Review Committee, as the case may be, shall have to consider the entire record of service of the concerned officer before taking a decision in the matter, where more importance is attached to the record of service and performance during the later years. The record to be considered would naturally include the entries in the confidential records/character rolls, which are 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 merits and not just on seniority. (v) An order of compulsory retirement is not liable to be quashed by a court / Tribunal 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. These principles were again confirmed in a recent decision of the Hon'ble Supreme Court in S. Ramachandra Raju v. State of Orissa (28 ATC 443) wherein it was reiterated that the entire service record of the officer, more particularly the preceding confidential reports for five years

would form the foundation for the opinion that the officer should be retired in public interest (see also judgment of the Supreme Court in UDI v. B.P. Seth & Anr. (1994 SCC L&S 1052 at 1053)). We may also note the judgment of the Supreme Court in another case State of U.P. and Anr. v. Bihari Lal (1994 (5) SLR 606 while at 607) where the court/considering the analogous provisions under Rule 56(j) of the F.R. held as follows:-

" It is settled law that the entire service record should be considered before taking a decision to compulsory retire a government servant exercising the power under Rule 56(j) of the Fundamental Rules. It is not necessary that adverse remarks should be communicated or every remark, which may sometimes be categorised as adverse be communicated. It is on an overall assessment of the record, the authority would reach a decision whether the government servant should be compulsorily retired/in public interest. In an appropriate case, there may not be tangible material but the reputation of officer built around him could be such that his further continuance would imperil the efficiency of the public service and would breed indiscipline among other public servants. Therefore, the government could legitimately exercise their power to compulsory retire a government servant. The court has to see whether before the exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision. What is needed to be looked into is the bona fide decision taken in the public interest to augment efficiency in the public service. In the absence of any mala fide exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by the Court/Tribunal in exercise of its judicial review."

(Emphasis added)

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8. In this case we have seen the service record of the applicant and also the recommendations of the Screening Committee and the Review Committee which was set up under the guidelines for reviewing cases for premature retirement of Central Government servants in 1985 and 1986. The Screening Committee which had considered the case of the applicant was chaired by the DCP, East District with the Assistant Commissioner of Police Headquarters and Head Clerk, East District as Members. In the minutes of the Review Committee meetings held on 14.7.1988 and 26.7.1988, it is recorded that the Review Committee having carefully considered the service records of Grade 'C' personnel of Delhi police, which includes the name of the applicant, and having taken into consideration the recommendations of the concerned internal Screening Committee found him unfit for further retention in service and had recommended that they should be retired under the rules in the public interest. The Review Committee was chaired by the Additional Commissioner of Police, Delhi and the members were DCP, South District, DCP (Vigilance) and DCP (PROV+Lines)- The impugned order had been passed as a result of the recommendations of the committee on 22.8.1988. It is seen from the record that although the applicant was promoted and confirmed as Sub-Inspector on 30.6.1979, he had, subsequent to the promotion been awarded a number of punishments and had also been

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communicated adverse remarks in his ACRs for 1986. In the circumstances of the case, the recommendations of the committee ^{after} having considered the entire service record, both favourable and adverse, ^{to issue} the order of compulsorily retirement is not liable to be quashed. The Supreme Court has in several cases, referred to above, held that the orders cannot also be quashed similarly on the showing that while passing it uncommunicated adverse remarks may have been taken into consideration (see ^{also} K.V. Jagannadham v. Secy. to the Govt. of Orissa (1987(2) SLR 263 CAT Bhu.)). After the applicant had been promoted as Sub Inspector on 19th July, 1975 and confirmed in that post on 30.6.1979, his service record shows that there was sufficient material on the basis of which the competent authority could come to a conclusion that it was in the public interest to retire him compulsorily. Following the decisions of the Supreme Court in Baikuntha Nath Das case (Supra) and S. Ramachandra Raju's case (Supra) and in the circumstances of the case, there does not appear to be any justification to interfere with the bonafide exercise of power by the competent authority, as this Tribunal cannot exercise the power of appeal while exercising its power of judicial review in the matter.

9. The plea taken by the learned counsel for the applicant that there has been violation of the Government of India's instructions/memorandum dated 5.1.1978, namely, Review for continuing that the committee ought to have considered him in the

lower post from where he had been previously promoted is

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rejected, firstly on the ground that these instructions are not mandatory but only guidelines (See observations of the Supreme Court in UI and Ors.v. N.A. Chauhan (1994 (28) ATC 66) and K.Prasad Rao v.S.D.E.E. (CAT) (1994 (8) SLR 455) .

As observed by the Supreme Court in N.A. Chauhan's case (Supra) " if the record is adverse then he cannot take shelter behind the executive instructions and must be chopped of as and when he catches the eyes of the prescribed authority."

~~Following the later decisions of the Supreme Court,~~ ^{13.}


Therefore, we find no infirmity in the proceedings of the Review Committee when the competent authority has held on the materials before it that the applicant was not fit to be continued in service, keeping in mind the later 5 years of his record of service and the principles laid down by the recent decisions of the Supreme Court referred to above. The exercise of the discretion by the Government in this case, including not considering his suitability for continuing him in the lower post as contained in the instructions cannot be considered to fall in the category of arbitrary exercise of power which calls for any interference in the matter. Secondly, the applicant has himself

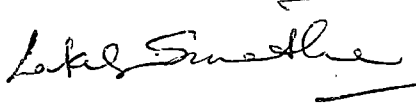
18/ admitted in the Rejoinder that he had been

communicated adverse remarks for the year 1974, i.e. while he was in the lower post of Assistant Sub Inspector. Although he might have got the promotion to Sub Inspector in 1975, where the adverse remark for 1974 might lose its sting, this is not a case where it can be considered that in the lower post his service record was good or excellent as contended by Shri Gupta. In the circumstances of the case and taking into account his overall performance of service ^{and} record for the last 5 years from 1983, the order of compulsory retirement is otherwise valid and is not liable to be set aside on this ground.

10. The other objection taken by the applicant is that the order of compulsory retirement has not been passed by the Appointing Authority but by the higher authority, namely, the Additional Commissioner of Police. Since the order has not been passed by an authority inferior to the appointing authority, there is no question of delegation of power in this case. ~~and the~~ case of Marathwada University v. S.B.R. Chavan (Supra) relied upon by the applicant is, therefore, distinguishable. Besides, the order of compulsory retirement is neither a punishment order, nor is there any mala fide exercise of the power, ^{and hence} there is no infirmity in the same and his plea is, therefore, rejected.

11. In the facts and circumstances of the case, we reject the applicant's contention that the order of compulsory retirement is arbitrary or perverse or against the rules or instructions in this case. We find no good ground to interfere and the application is accordingly dismissed. No order as to costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)