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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 561/89

New Delhi this the 5th day of May, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. P. T. THIRUVENGADAM, MEMBER (A)

Ex-ASI Amrit Lal No.688/D
S/O Shri Kashmere Lal Goyal,
R/O House No. 224, Jawala Nagar,
Halkara Kuan, Shahdara,
Delhi.

... Applicant

By Advocate Shri V. C. Sondhi

Versus

1. Lt. Governor of Delhi,
Raj Niwas, Delhi.

2. The Commissioner of Police,
Police Headquarters,
M.S.C. Building,
I.P. Estate,
New Delhi - 110002.

... Respondents

By Advocate Shri M. K. Giri

O R D E R (ORAL)

Shri Justice V. S. Malimath -

The petitioner, Shri Amrit Lal, was holding the post of Assistant Sub Inspector (Accounts) when the impugned order of compulsory retirement came to be made on 25.8.1987 as per Annexure-C under F.R. 56 and Rule 48 of the C. C. S. (Pension) Rules, 1972.

The said order was passed by the Additional Commissioner of Police, North District in exercise of the powers conferred by the said provisions on his forming the opinion that it was in public interest to compulsorily retire the petitioner from service. The representation

filed against the said order has been rejected during the pendency of these proceedings. The petitioner has challenged the order of compulsory retirement on several grounds. It was urged by the learned counsel for the petitioner, Shri Sondhi, that the order is arbitrary; passed for collateral purposes and is based on extraneous considerations. It is submitted that the guidelines prescribed for exercise of the power of compulsory retirement under the said provisions have not been followed. He also submitted that having regard to the weight of evidence which is favourable to the petitioner as compared to the material which is adverse to him, no reasonable person could have come to the conclusion that it was in public interest to compulsorily retire the petitioner from service.

2. Learned counsel for the petitioner invited our attention to the reply filed by the respondents in support of the order passed for compulsory retirement of the petitioner. Though the order does not contain any reasons, they have been furnished in the form of the counter affidavit. It is stated that a high power committee headed by the Additional Commissioner of Police (Range) Delhi has taken a decision in this behalf after taking into consideration the entire past service record of the petitioner. The counsel for the petitioner highlighted two aspects in this behalf. These submissions were made in the light of the averments made by the respondents in their reply that they have taken into consideration, among others,

the fact that the petitioner was convicted under Section 5 (2) of the Prevention of Corruption Act read with Section 161 of the Indian Penal Code and sentenced to undergo two years' rigorous imprisonment and to pay a fine of Rs.500/-. Another circumstance, inter alia, relied upon is the order of censure passed by the Dy. Commissioner of Police, Hqrs. for certain act of negligence on the part of the petitioner. This order was passed in the year 1979. It is no doubt true that there are certain other adverse circumstances for the anterior period which have also been adverted to in the reply. The petitioner's counsel submitted that having assessed the service records and performance of the petitioner his name was included in the list of persons fit for promotion to the cadre of Sub Inspectors some time in the year 1979. He, therefore, submitted that any adverse entries or remarks about his work and performance before that date would not be of great relevance. He appears to be right in his contention. But so far as the conviction is concerned which is for a very serious offence under the Prevention of Corruption Act involving moral turpitude, the same was obviously made after the enlistment of the petitioner. He was convicted in the year 1980. The censure is also of the year 1979. In this background it was maintained that the petitioner having preferred an appeal against the order of conviction and the said appeal having been admitted by the High Court which is still pending, the entire matter is sub judice and that, therefore, the competent authority was not entitled to take the conviction of the petitioner

into account for the purpose of formulation of the requisite opinion that it is in public interest to compulsorily retire the petitioner from service. We have no doubt in our mind that taking into consideration the service records of the petitioner for several years which has been highlighted in the reply filed by the respondents, the decision of compulsory retirement cannot be faulted on the ground that it is manifestly unreasonable or arbitrary, if the order of conviction and sentence passed against the petitioner in the year 1980 can legitimately be taken into account. This is not a case of mere pendency of a case against the petitioner for a criminal offence. This is a case where a criminal case after full trial has resulted in an order of conviction and sentence being passed against the petitioner by a court of competent jurisdiction. It is no doubt true that appeal against the said decision has been admitted and pending consideration before the High Court. Apart from the assertion of the learned counsel for the petitioner that it should not be taken into account, he has not been able to put forward any convincing reasons in support of this contention. We see no principle of law as to why the order of conviction passed against the petitioner by the criminal court cannot be taken into account for exercise of the power of compulsory retirement under the aforesaid statutory provisions, merely on the ground that appeal against the said order of conviction is pending consideration before the High Court. The law on compulsory retirement has been succinctly summarised in the latest judgment of the Supreme Court

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reported in JT 1992 (2) SC 1 between Shri Baikuntha Nath Das & Anr. Vs. Chief District Medical Officer, Baripada & Anr. In paragraph 34 of the judgment the following principles have been laid down :-

"(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) 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 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 an 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 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 aspect has been discussed in paras 30 to 32 above."

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In paragraph 30 of the judgment this is what the Supreme Court has observed :-

"30. On the above premises, it follows, in our respectful opinion that the view taken in J. N. Sinha is the correct one viz., principles of natural justice are not attracted in a case of compulsory retirement under F.R. 56(j) or a rule corresponding to it. In this context, we may point out a practical difficulty arising from the simultaneous operation of two rules enunciated in Brij Mohan Singh Chopra. On one hand, it is stated that only the entries of last ten years should be seen and on the other hand, it is stated that if there are adverse remarks therein, they must not only be communicated but the representations made against them should be considered and disposed of before they can be taken into consideration. Where do we draw the line in the matter of disposal of representation. Does it mean, disposal by the appropriate authority alone or does it include appeal as well. Even if the appeal is dismissed, the Government servant may file a revision or make a representation to a still higher authority. He may also approach a Court or Tribunal for expunging those remarks. Should the government wait until all these stages are over. All that would naturally take a long time by which time, these reports would also have become stale. A government servant so minded can adopt one or the other proceeding to keep the matter alive. This is an additional reason for holding that the principle of M.E. Reddy should be preferred over Brij Mohan Singh Chopra and Baidyanath Mahapatra, on the question of taking into consideration uncommunicated adverse remarks."

The Supreme Court has, therefore, expressed itself very clearly when it said that though the competent authority is required to take into account the confidential records and the adverse entries as also the favourable entries made against the government servant in the matter of making an order under F.R.56(j)

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for compulsory retirement, the mere fact that certain adverse entries for certain years have not been communicated or though they have been communicated, representations or appeals against the same are pending, cannot have the effect of vitiating the order of compulsory retirement made on consideration of such remarks or adverse entries. The same principle would equally apply in cases like this where a court of competent jurisdiction has passed an order of conviction and imposed a sentence. The mere fact that an appeal is pending against the said decision before a superior court does not preclude the competent authority from taking such a conviction into account. The order of compulsory retirement cannot be regarded as vitiated on the ground that the conviction and sentence which is subject matter of the appeal has been taken into consideration. We have, therefore, no hesitation in holding that the competent authority cannot be faulted on the ground that it took into account the conviction of the petitioner made in the year 1979. The nature of the offence for which the petitioner was convicted is of vital importance. He has been convicted under the Prevention of Corruption Act. The offence involved is of moral turpitude. A police officer has to be of an exemplary character. A corrupt officer has no place in the police administration. If in this background the competent authority took into account the conviction of the petitioner along with other service records in the matter of compulsory retirement, it cannot be said that the competent authority acted arbitrarily

or manifestly unreasonably. It is not possible to take the view that the competent authority acted perversely in this behalf. It is also not possible to take the view that the competent authority based its decision on collateral or extraneous reasons.

3. Mere pendency or admission of the appeal against the order of conviction cannot have the effect of nullifying the same. Suspension of the sentence passed by the Criminal court cannot also justify ignoring the verdict. Consideration of the order made by the criminal court convicting the government servant which conviction was in force on the date on which the competent authority took the decision to compulsorily retire the petitioner from service, cannot, therefore, be faulted. Even suspension of the sentence or grant of bail pending the appeal do not have the effect of nullifying the conviction of the petitioner. We have therefore, no hesitation in holding that taking into consideration the conviction passed against the petitioner under the Prevention of Corruption Act does not vitiate the impugned order of compulsory retirement of the petitioner from service.

4. Another argument of the learned counsel for the petitioner is that if we look at the totality of the awards which the petitioner has won for good work as against the warnings or punishments imposed on him from time to time, the balance is very much in favour of the petitioner. The Supreme Court has pointed out that the decision to compulsorily retire a government servant under F.R. 56 (j) or rules

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corresponding to it is based on subjective satisfaction of the competent authority. We cannot re-appreciate the material and substitute our own findings. This is not a case of no evidence. There is sufficient evidence to support the subjective satisfaction of the competent authority.

5. It was lastly argued that whatever benefits the petitioner was entitled to consequent upon his compulsory retirement have not been accorded to him. We have no satisfactory material in support of this case. It is but fair that whatever benefits the petitioner is entitled to in law consequent upon his compulsory retirement ought to be paid to him with utmost expedition. If that has not been done, the same shall be done within a period of three months from this date.

6. With these observations, this application is dismissed. No costs.

P. T. Thiruvengadam

(P. T. Thiruvengadam)
Member (A)

V. S. Malimath

(V. S. Malimath)
Chairman

/as/