

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 650/89
T.A. No.

199

DATE OF DECISION 6.9.1991

Shri J.L. Jain	x Petitioner Applicant
S/Shri D.R. Gupta, D.P. Khokha with Shri R. Venkatramani Versus Union of India & Others	Advocate for the Retitioner(s) Applicant
Shri S.N. Sikka	Respondent
	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked in the Indian Railway Accounts Service for over 28 years, had a fairly successful and trouble-free career till he was served with a memorandum dated 22.2.1989 proposing to hold an enquiry for major penalty against him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. Within a month thereafter, he was compulsorily retired by the President of India in exercise of the powers conferred by Rule 2046 (h) of the Indian Railway Establishment Code by the impugned order dated 13.3.1989. At that time, he was

13
holding the post of F.A. & C.A.O. Another memorandum dated 10.11.1989 proposing to initiate a similar enquiry, was served on him after his retirement. A third memorandum dated 19.12.1989 was also issued to him conveying displeasure of the Railways for harming the interests of a Contractor for not agreeing to registering the Contractor for certain categories of work. He has challenged the validity of impugned orders dated 22.2.89, 13.3.89 and 10.11.89 in separate applications filed in the Tribunal (OA-649/89, OA-650/89 and OA-147/90).

2. OA-650/89 in which the impugned order of compulsory retirement has been challenged, has been heard at length and orders reserved thereon. The other two applications are still pending.

3. There had been no adverse remarks about his work or integrity as reflected in the Annual Confidential Records for the last five years of the applicant. He has not been compulsorily retired on the ground that he has become deadwood. This has been done due to his suspicious, doubtful integrity. A Screening Committee had considered the matter before the competent authority approved the proposal to compulsorily retire him in public interest.

4. Copies of the Screening Committee's report and the relevant notings were made available to the applicant pursuant to the directions given by the Tribunal on 7.2.1991.

14

5. The Government have issued detailed guidelines on the subject of premature retirement on the ground of doubtful integrity (vide letter dated 1.11.1985 issued by the Railway Board corresponding to O.M. dated 7.1.1985 issued by the Department of Personnel).

6. The above guidelines have been issued keeping in view the observations of the Supreme Court that in order to pass the test of constitutionality, the rule providing for compulsory retirement "must needs be safeguarded by reasonable procedural guidelines in order that there may be no scope for arbitrariness or discrimination". Further, the rules being silent, "instructions speak and do vitalise service in a vacuous field" (vide State of U.P. Vs. Chandra Mohan Nigam and Others, 1977 SLJ 633).

7. We are conscious of the fact that the Tribunal cannot sit in appeal or review over the recommendations made by the Screening Committee and the decision taken by the competent authority. According to the well-settled legal position, the power of judicial review in cases of compulsory retirement is limited to examining whether the authorities concerned proceeded in the matter not only bona fide and in a fair manner, but also in accordance with the guidelines laid down by the Government in this regard. The validity of the action taken is to be tested

on the touchstone of these guidelines and this belongs to the province of judicial review.

8. In the instant case, on 27.1.1989, a note was submitted to the Railway Board which functioned as the Screening Committee to review the case of the applicant under Rule 2046 (h). The review was made in the context of examination of a vigilance case against him and on the observation made by the Railway Board that his service record and vigilance history may be reviewed for his premature retirement. The C.V.C. had also advised such a review.

9. It is recorded in the above mentioned note that as per the yardstick laid down in regard to review on the basis of C.Rs, the applicant was fit to be continued in service beyond the age of 50 years.

10. As regards review with reference to his integrity, it was observed in the said note that in the past, the applicant figured in one case relating to alleged favouritism in the matter of award of contract, but the allegations remained unsubstantiated and the file was closed in 1978.

11. The note refers to the pendency of the following

16

four vigilance cases against the applicant:-

Nature of charge	Present position
i) Favours shown in arbitration award	Being investigated by CBI. The investigation will also cover as to whether he is in possession of disproportionate assets.
ii) Award of works to other than lowest tenderer.	Under vigilance investigation
iii) Irregularities in enlistment of a Contractor.	Under vigilance investigation
iv) Irregularities in enhancement proposal for an item 'Dry flat brick pitching'.	Under vigilance investigation

12. In the background of the aforesaid cases, it was proposed in the note that the provisions of Rule 2046 (h) may be invoked in the case of the applicant. Paras 10 to 12 of the note containing the proposal read as follows:-

"10. The nature of allegations in the vigilance cases against Shri Jain apparently reflect adversely on his integrity, and, prima facie Shri Jain's integrity is not free from doubt. It would, therefore, seem to be desirable to invoke the provisions of Rule 2046(h)-R-II and retire him from service in public interest on grounds of doubtful integrity. It may be mentioned here that in terms of Rule 2308-R-II, disciplinary proceedings can be instituted against Shri Jain even after his retirement for cut in his pension for the charges that may be held as established against him finally.

11. If the Board, in their capacity as Screening Committee, are collectively of the view that it is a fit case for invoking the provisions of Rule 2046(h)-R-II, approval of MCS(R) will have to be solicited to the proposed action, as President is the Appointing Authority in this case.

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12. Submitted to the full Board for making recommendation with reference to the preceding paragraph 9 and 10."

13. Thereafter, the matter was discussed in the Railway Board and the following note was submitted for the approval of the Minister of State for Railways on 14.2.1989, which he approved on the next day:-

"This case of review under Rule 2046(h)-RII of the service and vigilance record of Shri J.L. Jain, FA&CAO(CON), Northern Railway was submitted to Board and MOS (R) vide notings on pages 3-5/ante.

2. The case was discussed in the Board meeting held on 9.2.89. In view of his vigilance record, it was decided that this officer should be prematurely retired under Rule 2046 (h)-RII.

3. MOS(R) may kindly approve the proposed action on behalf of the President. He may be paid pay and allowances in lieu of three months' notice period."

14. We have gone through the records of the case carefully and have considered the rival contentions. The basic contention of the applicant is that the impugned order is a cloak to impose the penalty of removal from service under the guise of compulsory retirement and that it is mala fide, arbitrary and unjust. During the hearing, the learned counsel for the applicant submitted that this is a clear case of non-application of mind and that the impugned order is tainted with legal mala fides. As against this, the respondents have contended that the impugned order was passed in keeping with the public interest, that it does not cast any stigma, and that the decision was taken by the competent authority after taking into consideration the entire service record of the applicant.

18

15. According to the guidelines issued by the Government, premature retirement should not be used to retire a Govt. servant on grounds of specific acts of misconduct as a short cut to initiating formal disciplinary proceedings. Referring to the provisions of Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958, which corresponds to FR-56(j) and Rule 2046 (h) of the Indian Railway Establishment Code, the Supreme Court in State of W.P. Vs. Chandra Mohan Nigam & Others, 1977 SLJ 663, has observed as follows:-

"We should hasten to add that when the integrity of an officer is in question, that will be an exceptional circumstance for which orders may be passed in respect of such a person under Rule 16(3), at any time, if other conditions of that rule are fulfilled, apart from the choice of disciplinary action which will also be open to Government."

16. The power under Rule 2046 (h) of the Indian Railway Establishment Code could be exercised in case where there are no specific acts of misconduct and where there is only room to doubt the integrity of the Government servant concerned. In such a case, invoking the power under the said Rule, could be justified. On the other hand, if the power has been exercised in a case where specific acts of misconduct on the part of the Government servant has been alleged and the Government servant has valid explanation, the power under Rule 2046 (h) cannot be invoked as a short cut to initiate formal disciplinary proceedings. In our

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opinion, that would amount to a colourable exercise of power.

17. The material before the Screening Committee in the instant case consisted of three specific acts of misconduct, viz., showing favour in an arbitration award, award of works to a party other than the lowest tenderer and irregularities in the enhancement proposal for an item of contract.

18. The question whether the applicant has shown favour in the arbitration case in which the applicant was a co-arbitrator, is sub judice in the Delhi High Court. There is no judicial finding that the applicant has shown any favour to the claimant in the arbitration proceedings, as alleged. With regard to the award of contract to a party other than the lowest tenderer, the respondents have already initiated disciplinary proceedings against the applicant for major penalty by issuing a memorandum to the applicant on 22.2.1989. It is significant to note that the impugned order of compulsory retirement was passed on 13.3.1989, which was only a few days after the aforesaid memorandum was issued on 22.2.1989. With regard to the irregularities in the enhancement proposal for an item of contract relating to dry flat brick pitching, ^{disciplinary} proceedings have been initiated on 10.11.1989 against the

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applicant. The aforesaid two disciplinary proceedings have been challenged in this Tribunal in OA-649/89 and OA-147/90. The applicant has also drawn our attention to an order issued to him on 19.12.1989 whereby the respondents have conveyed their displeasure to him in respect of ^{alleged} irregularities committed by him in the enlistment of a Contractor. This was about 8 months after he was compulsorily retired from service.

19. The material before the Screening Committee consisted of the alleged misconduct committed by the applicant in the two contracts awarded by the Railways in respect of one of which disciplinary proceedings had already been initiated on the eve of his compulsory retirement. The alleged favour shown by him in the arbitration award is the subject matter of litigation in the Delhi High Court.

20. We do not propose to examine the details of the aforesaid allegations and the explanations of the applicant as the law will have to take its own course. When the respondents have already initiated disciplinary action against the applicant in respect of the alleged irregularities committed by him in the award of contracts and the question whether or not he has shown any favour to a party in the arbitration proceedings, is pending in the Delhi High Court, it would appear that passing of the impugned order of

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compulsory retirement, is not legally sustainable. The surrounding circumstances clearly indicate that it casts a stigma on the applicant.

21. In the conspectus of the facts and circumstances of the case, we hold that the imagned order dated 13.3.89 purporting to compulsorily retire the applicant from service, by invoking the power under Rule 2046(h) of the Indian Railway Establishment Code, is not legally sustainable, as the very basis for such action consists of a disciplinary proceeding instituted on the eve of his compulsory retirement, followed by another disciplinary proceeding instituted after his compulsory retirement and the alleged misconduct on his part while functioning as an arbitrator which is sub judice in the Delhi High Court.

22. At the same time, we do not direct the respondents to reinstate the applicant as FA&CAO as they have passed the imagned order of compulsory retirement on the ground of alleged doubtful integrity. The respondents are, however, directed to consider appointing the applicant in a less sensitive assignment. In any event, the respondents shall give to him pay and allowances which he was drawing as on 13.3.1989 together with the arrears. They shall continue to give him the same pay and allowances every month.

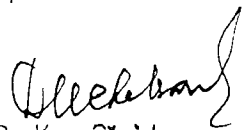
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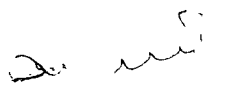
22

23. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order. We, however, make it clear that the respondents will be at liberty to review the case of the applicant in the light of the final orders passed in the arbitration case pending in the Delhi High Court and the two disciplinary proceedings initiated against the applicant, which are the subject matter of OA-649/89 and OA-147/90 pending in the Tribunal.

24. The interim order passed on 17.4.1989 regarding the continuance of the applicant in Government accommodation and the grant of other facilities to him is hereby made absolute.

25. There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member


- 6/9/91
(P.K. Kartha)
Vice-Chairman (Judl.)