

(18)

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1008/89

New Delhi this the 28th Day of April, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri C.J. Roy, Member (J)

Tulsi Dass S/o Sh. K.L. Dass,
R/o 12-D, Dovar Lane Extension,
Calcutta-29.

...Applicant

(None for the applicant)

Versus

1. Union of India,
through Secretary,
Ministry of Home Affairs,
Govt. of India,
New Delhi.

2. Secretary,
Department of Official Language,
Central Secretariate,
North Block (1st Floor),
New Delhi.

3. Director of Estates,
Nirman Bhawan,
New Delhi.

...Respondents

(By Advocate Mrs. Raj Kumari Chopra)

ORDER(ORAL)

Mr. N.V. Krishnan:

This O.A. has been filed by the applicant impugning the Annexure A order dated 24.2.89 by which he was pre-maturely retired on attaining the age of 55 years in public interest under F.R. 56-J by the second respondent. The applicant was earlier represented by Sh. Umesh Mishra & Company and on earlier occasions Sh. Umesh Mishra used to appear for the applicant. His last appearance was on 22.7.92. Sometime in 1994 that counsel expired and this was noted by us in the proceedings on 8.3.94. We, therefore, directed that notice should be issued to the applicant for the next date of hearing, i.e., today. Accordingly a registered A.D. notice was sent to the applicant at the address given by him in the O.A. which has been returned with the remark of the Postal Department "left".

2. As there is no other method of serving this applicant we have decided to hear the learned counsel for the respondents.

3. We have heard her. We have also perused the records.

4. The applicant was earlier retired under the same provisions in October, 1986. That order was challenged by him in OA-890/86 and that order was set aside. The judgement is reported in 1987 SLJ (2) 59. The learned counsel for the respondents states that that order was issued on our satisfying that the applicant has completed 55 years of age which is necessary for the exercise of the powers under F.R. 56 J.

5. Subsequently, on the happening of that event, i.e., attaining the age of 55 years the case of the applicant was considered in accordance with the procedure laid down and the impugned order was passed.

6. The applicant has raised a number of grounds to impugn the order. These have been dealt with in the reply of the respondents which has been brought to our notice by the learned counsel. We, therefore, proceed to consider them simultaneously.

7. It is stated that there were adverse remarks for the years 1983 and 1984. The applicant states that the representation filed against these remarks have been rejected. In regard to 1987 adverse remarks he states that these were communicated to him. He had filed a representation but this is still pending. In this connection it is stated that the Review Committee has considered the stale grounds and the good grounds which are in favour of the applicant have not been considered.

8. The learned counsel for the respondents submits that it has been clearly stated in the reply that the Review Committee has perused the entire service record and character roll of the applicant and did not confine itself to the records of four or five years. It is further stated that the representation of the applicant against the adverse remarks of 1989 has also been rejected by the Annexure R-2 memorandum.

9. The rule in this regard has been laid down by the Supreme Court in Baikuntha Das v. Chief D.M.O. Baripada - JT 1992 (2) SC 1. The Supreme Court has held that it is necessary to consider the entire service record, but, mere attention should be paid to the more recent remarks. It has also been held that merely because a representation against the adverse remarks is pending it cannot be that the adverse remarks therein should be ignored. As a matter of fact, in the present case the adverse remarks of the year 1987 were still pending when the decision was taken to retire him because the Annexure-2 order rejecting the representation is issued on 3.5.89 after the impugned order was issued. However, this would make no difference to the validity of the order, for, as mentioned in the counter-affidavit, Review Committee has considered the entire record. Admittedly, there are certain adverse remarks which is not denied.

10. It is also not for this Tribunal to examine the adequacy or otherwise of the grounds for premature retirement so long as grounds do exist.

11. The next point raised by the applicant is that the retirement is due to the fact that the respondents are annoyed because the earlier order

of compulsory retirement has been struck down by the Tribunal. We do not find any merit in this allegation. No malice has been assigned to any respondents. That apart, it has been pointed out by the learned counsel for the respondents that on earlier occasion there was a mistake inasmuch as the applicant was retired before ensuring that all the necessary conditions laid down in F.R. 56-J have been satisfied.

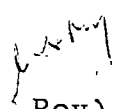
12. It is next submitted that the applicant had been demanding his promotion to higher post to the post of Joint Director and that the Review Committee and the Screening Committee did not consider this aspect. This contention is totally irrelevant. A Review Committee has only to consider the record as ^{it} existed and it is not concerned with examining whether the applicant was fit or eligible for promotion. If the applicant had been promoted earlier before the date of retirement that would have been one of the considerations to be looked into by the Screening Committee. That is not the situation here. This ground is, therefore, devoid of any merit.

13. The applicant then states that during his entire period of service neither any chargesheet nor any punishment was given to him. This, by itself, in our view, will not necessarily mean that proceedings under F.r. 56-J cannot be taken against a Government servant.

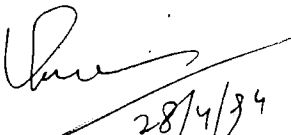
14. It is alleged that the order of retirement is punitive in nature. However, no grounds have been adduced to substantiate this contention.

15. The learned counsel for the respondents also pointed out that in terms of the standing instructions it was open to the applicant, on receipt of the impugned order, to seek a review of the decision taken. That opportunity has not been availed of by him and instead he has approached this Tribunal directly. There is merit in this contention because it would be open to the applicant to raise all grounds which would necessarily have to ^{be} considered by a Committee as mentioned in the standing instructions.

16. In short, we find that no case has been made out by the applicant. We find no merit in the application and it is dismissed. No costs.


(C.J. Roy)
Member(J)

Sanju.


28/4/84
(N.V. Krishnan)
Vice-Chairman