

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 1380/88
TAX No.

199

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DATE OF DECISION 3.4.1991

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| <u>Shri R.S. Kakkar</u> | Petitioner |
| <u>Shri Sant Lal</u> | Advocate for the Petitioner(s) |
| Versus | |
| <u>Union of India & Ors.</u> | Respondent |
| <u>Shri P.P. Khurana</u> | Advocate for the Respondent(s) |

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

AB 3.4.91
 (AMITAV BANERJI)
 CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

REGN. NO.OA-1380/88 DATE OF DECISION: 3.4.1991

SHRI R.S. KAKKAR ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

CORAM

THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI SANT LAL, COUNSEL

FOR THE RESPONDENTS SHRI P.P. KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri R.S. Kakkar, Mail Overseer, Paonta Sahib Post Office, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging his premature retirement under provisions of FR 56(j) and Rule 48 of the CCS (Pension) Rules, 1972 vide order No. B2/39 dated 18.4.1988 and 27.6.1988 (Annexure A-1 and A-2) respectively.

2. The relevant facts of the case are that the applicant joined the Postal Service as a Postman on 23.9.1957. He was holding the post of Mail Overseer substantively w.e.f. 23.9.1966 when he was sent impugned notice/order dated 18.4.1988 by the Superintendent of Post Offices, Solan Division, Solan for premature retirement effective from the forenoon of the date following the date of expiry of three months computed from the date following the date of service of the notice to the applicant. The order was received by the applicant on 30.4.1988. The applicant was also given the option of

continuing in service in case he was willing to accept the lower post of Postman. He submitted an appeal against the notice/order of premature retirement on 3.6.1988 addressed to the Director, Postal Services, Himachal Pradesh circles. In response to this he was advised that "the decision to take action under FR 56 (j) has been taken by the High Power Committee. Hence no representation can be addressed to DPS." Thereafter, the applicant submitted a representation to the Director General (Posts) on 4.7.1988 for reconsideration of his case but there was no response..

By way of relief he has prayed that the impugned notice/order dated 18.4.1988 may be set aside with the direction to the respondents to retain him in service.

2. The respondents in their written statement have not disputed the facts set out above except as hereunder. The contention in paragraph 6.6 of the application is admitted to the extent that the representation of the applicant was due to the PMG, HP, Shimla/ HPC Postal, HP, Shimla; nevertheless the same was given due consideration by the PMG and rejected. It is further submitted that the decision to retire the applicant was taken under the provisions of FR 56(j) and Rule 48 of the CCS (Pension) Rules, 1972 in public interest by giving him notice of not less than three months in writing and that the said decision was taken after consideration of all service records by the High Power Committee (HPC). The respondents have furnished the minutes of the Review Committee held on 16.11.1987 for the quarters ending 30.6.1987 and 30.9.1987. The relevant portion of the minutes is reproduced below:

"He is ordered to be served with retirement notice but in the covering letter as per item VI of DG

2

No. 135/133/77/SPB-II dated 14/153-78, the Committee considers that the official should be given option to serve in the lower cadre of Postmen from which he was promoted as Mailoverseer. In case the official gives his option to serve in the lower cadre he will be reduced to the lower cadre subject to further review on his attaining the age of 55 years to consider whether his further retention in the service is desirable or not."

3. Shri Sant Lal, the learned counsel for the applicant submitted that the High Power Committee, for reviewing the cases for premature retirement comprised the Director of Postal Service, HP and Post-Master General, HP. Further the HPC did not make a recommendation but ordered that the applicant be served with retirement notice without leaving any discretion with the competent authority to consider the case and form an opinion if it was necessary to retire the applicant in public interest. The learned counsel in this connection drew our attention to the case of **Hoshiar Singh & Ors. v. Union of India & Ors.** - SLJ 1987(4)CAT 1002 wherein the Review Committee for premature retirement of the Sub-Inspectors was presided over by the Commissioner of Police while the competent authority was lower in rank than the Commissioner of Police. In these circumstances the Tribunal felt that in cases where the Review Committee comprised officers higher in rank and makes specific recommendations to retire a Government, the competent authority is left with little discretion to exercise its judgement in coming to a decision whether the employee should or should not be retired compulsorily in public interest.

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The learned counsel further submitted that the instructions regarding premature retirement of Central Government as incorporated in Appendix 10 to the Swamy's Compilation of CCS (Pension) Rules, 1972 stipulate that:

"where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule (s), the appropriate authority should record in the file that it has formed its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule(s) in public interest. In the case of Union of India versus Col. J.N. Sinha, the Supreme Court had observed that "the appropriate authority should bonafide form an opinion that it is in public interest to retire the officer in exercise of the powers conferred by that provision...."

The learned counsel added that, first the decision ordering premature retirement of the applicant was taken by a High Power Committee leaving the competent authority, which was lower in rank, with no option to form independent an opinion and secondly the recommendation of H.P.C. does not bring out the reasons for making such a recommendation.

The Tribunal had set aside the order of compulsory retirement in **Hoshiar Singh's** case (supra) in similar circumstances.

The next authority cited by the learned counsel for the applicant is **Baldev Raj Chaddha V. Union of India and others (S.C.) - SLJ 1981(1) SC 188.** where their Lordships in the Supreme Court observed that:

"A break-down of the provision brings out the basic components. The order to retire must be passed only by 'the appropriate authority'. That authority must form the requisite opinion - not

subjective satisfaction but objective and bona fide and based on relevant material. The requisite opinion is that the retirement of the victim is 'in public interest' - not personal, political or other interest but solely governed by the interest of public service. The right to retire is not absolute, though so worded. Absolute power is anathema under our constitutional order. 'Absolute' merely means wide not more. Naked and arbitrary exercise of power is bad in law. These essentials once grasped, the applicant's submissions become self-evident."

The learned counsel further supported his argument by citing **Ram Ekbal Sharma V. The State of Bihar III(1990 CSJ (SC) 152)**

and Brij Mohan Singh Chopra 1(1987 ATLT 528)

He further emphasised that the applicant had unblemished record of service during the past five years except minor penalties of withholding of increment for three months and censure during 1985. No adverse entry with regard to doubtful integrity or his ineffectiveness had ever been communicated to the applicant and if any adverse entry in the ACR is there, it has not been communicated to the applicant and for that reason the same cannot be considered to the disadvantage of the applicant.

In Gurdial Singh Fijji Vs. State of Punjab and others, AIR 1979 SC 1622, the apex court observed:

"The principle is well settled that in accordance with the rules of natural justice, an average report in a confidential roll cannot be acted upon

to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report."

Since no adverse entry has been communicated to the applicant at the most he could have been assessed as average. The average assessment in ACR cannot be used against the applicant for retiring him prematurely (**1990 (3) CSJ (HC)374 -Charanjit Singh V. The State of Punjab.**)"

The learned counsel for the applicant also relied on **Dr. (Mrs.) Sumati P. Shere V. Union of India and others - 1989(3) SLJ 110** where their Lordship in the Supreme Court observed that:

"We must emphasize that in the relationship of master and servant there is a moral obligation to act fairly. An informal if not formal, give and take on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertance and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right tract."

No such failure or lapse has ever been brought to the notice of the applicant to improve his performance.

4. The learned counsel for the respondents submitted that he would require the original record of the case to

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assist the Bench and the case was adjourned at his request to 6.3.1991. No record, however, was produced at that date.

5. We have heard the learned counsel of both the parties and perused the material placed before us. We find that the Review Committee's recommendations, as contained in the minutes of the Review Committee dated 16.11.1987 are in the nature of an order rather than a recommendation. The Review Committee has also not given any overall assessment in regard to the performance of the applicant during the last 5 years nor has the totality of the service record been assessed. There is only a premptry recommendation stating that " he is ordered to be served with retirement notice" and that "the Committee considered that the official should be given option to serve with the lower cadre of Postman....."

In the absence of service record of the applicant it is not apparent if the competent authority considered the case of the applicant in accordance with the instructions contained in Appendix 10 of the Swamy's Pension Compilation regarding premature retirement and formed a bonafide opinion that it is necessary to retire the applicant in public interest. No material has been produced before us to justify the premature retirement of the applicant. We also find merit in the argument that it would have been difficult, if not impossible, for the competent authority to act otherwise than the order contained in the recommendation by the Review Committee presided over by the PMG, for retiring the applicant

21

16

prematurely or offering him the lower post of Postman, if he was willing to serve in that post.

In view of the above and in absence of any material justifying the premature retirement of the applicant, we have no alternative but to set aside the order No. B2/39 dated 18.4.1988 (Annexure-I) and B2/39 dated 27.6.1988 (Annexure-2), which we hereby do. The applicant shall be deemed to have been continued in service from the date he was prematurely retired and he shall be entitled to all consequential benefits consequent to his reinstatement in service from the date of premature retirement. The respondent shall implement the above order within 3 months from the date of communication of this order.

There will be no orders as to costs.

I.K. Rasgotra
(I.K. Rasgotra)

Member (A) 3/4/91

AB
(Amitav Banerji)

Chairman