

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA.No.1473 of 1988

Dated New Delhi, this the 27 th day of May, 1994

Hon'ble Shri J. P. Sharma, Member(J)
Hon'ble Shri B. K. Singh, Member(A)

Shri R. K. Tandon
G-47, Kirtinagar, 1st Floor,
NEW DELHI

... Applicant

By Advocate: Shri S. C. Gupta
with Shri L.R. Goel

VERSUS

1. Union of India
Through Chairman
Railway Board
Rail Bhawan
NEW DELHI 110001

2. The General Manager
Northern Railway
Baroda House
NEW DELHI

... Respondents

By Advocate: Shri N. S. Mehta
with Shri P.S. Mahendru
and Shri R. L. Dhawan

O R D E R

Shri B. K. Singh, M(A)

This OA No.1473/88 has been filed under Section 19 of the Administrative Tribunal Act, 1985 by Shri R. K. Tandon as applicant and Union of India through Chairman Railway Board, New Delhi and General Manager, Northern Railway, Baroda House, New Delhi as respondents. This OA is directed against ⁽ⁱ⁾ Order No.E(G)I-57/SA-18/21 dated 21.7.87 conveyed by Joint Secretary(E), Railway Board, whereby the applicant was informed that the President had decided to retire the applicant from service with immediate effect, in purported exercise of his powers under Rule 2046(h) of the Indian Railway Establishment Code, Volume-II, and further, to pay him three months salary in lieu of three months Notice as required under the Rules; (ii) General Manager,

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Northern Railway's letter No.E-374/G-V dated 05/08.2.1988 whereby the applicant has been advised that the President has rejected the applicant's representation dated 30.7.87 made against the aforementioned Order of compulsory retirement; and, (iii) Chief Engineer(Construction), Northern Railway letter No.E-141/1/W spl. dated July 23, 1987.

2. The material averments are these. The applicant joined as Temporary Assistant Engineer in 1963. He was promoted to Senior Scale w.e.f. 2.4.1977. He was permanently appointed to the Indian Railway Service of Engineers(hereinafter called IRSE) w.e.f. 12.3.79. He was given Junior Administrative Grade and posted as Deputy Chief Engineer, Northern Railway (Track Modernisation) on 4.3.82. In view of Adverse Remarks in his Annual Confidential Reports from 1983 to 1986, he was compulsorily retired by the President under Rule 2046(h) of the Indian Railway Establishment Code, Volume-II since he had completed 50 years of age and the President felt that it was in the public interest to retire him.

3. The reliefs sought by the applicant are:

- (i) quash the impugned order of compulsory retirement passed on 22.1.1987 conveyed by Joint Secretary(E) Railway Board's Order No.E(G)1-57/SA-18/21 dated 21.7.1987;
- (ii) quash the President's order rejecting the applicant's representation of 30.7.87 against the aforementioned impugned order of

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compulsory retirement, which rejection was conveyed vide G.M. Northern Railway's letter No.E-374/G-V dated 5/8.2.88.

- (iii) direct the respondents to treat the applicant as having never been retired, and, to direct them further to allow the applicant to resume his post and duties as though the impugned orders were never passed;
- (iv) direct the respondents to give the applicant all his due emoluments and other benefits, including arrears of wages etc. on the basis as though the impugned orders have never been passed;
- (v) pass any other or further orders which this Hon'ble Tribunal may be pleased to consider as reasonable and proper in the facts and circumstances of the case.

4. A notice was issued to the respondents who filed their reply and contested the application and opposed the grant of reliefs prayed for by the applicant.

5. We heard Shri S. C. Gupta, learned senior counsel with Shri L. R. Goel for the applicant and Shri N. S. Mehta, Shri P.S. Mahendru and Shri R. L. Dhawan for the respondents and perused the record of the case and also the minutes of the Screening Committee and final orders passed by the President of India in the light of the recommendations of the Railway Board.

6. The learned sr. counsel for the applicant argued that except for the period from 1983 to 1987, the applicant was always rated as a good officer and he was allowed to cross the Efficiency Bar and given his due promotions in the Senior Scale and Junior

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Administrative Grade in the IRSE. He also attended Railway Staff College Course at Baroda and also underwent Advanced Track Technology, in the Indian Railway Institute, Pune. He was nominated in a number of important Courses during the last ten years of his career and it is to be noted that only bright officers are nominated for these Courses. In the Operations Research Course at the Railway Staff College, Baroda in 1979, the applicant came out with flying colours and got 485 out of 700 marks i.e., 69.3%. His performance in the Railway Staff College, Baroda from 28.6.82 to 7.8.82 was also rated as excellent. He successfully underwent the Course on Soil Mechanics at the Indian Railway Staff College, Baroda. Further he was nominated for the Management Course at the Railway Staff College, Baroda from 28.5.79 to 16.6.79. He also attended Executive Course for J.A. Grade Officers conducted by Railway Staff College, Baroda from 25.2.85 to 2.3.85. He also attended the prestigious Advanced Bridge Course in the Indian Railway Institute of Advanced Track Technology, Pune from 2.6.86 to 1.8.86 and he was placed in Good Category. He also attended Special Course on Contracts and Arbitration, Railway Staff College, Baroda w.e.f. 9.2.87 to 13.2.87.



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The fact that prior to his compulsory retirement, the applicant was deputed to eight different courses, many of which were prestigious courses, speaks volumes about his efficiency and performance. It was further argued that, a person can be retired only on two grounds - ie, on the basis of doubtful integrity and on grounds of inefficiency. The applicants integrity was never suspected and as such it is presumed that he was retired on the grounds of inefficiency. He further argued that a Review is required to be done six months before a person is about to complete the age of 50 years or 30 years of service as laid down in para-II sub-para(i) of Railway Board letter no.E(P&A)1-77/RT-53, New Delhi. This is enclosed as Annexure 'G' with the OA. It lays down, "The cases of Railway Servants covered by rule 2046(h) R-II of Rule 2046(K)-R-II or para 2(2) of Section 1 of Railway Ministry's letter No.E 48 PC/208 dated 8.7.50 incorporated as para 620 of the Manual of Railway Pension Rule, 1950, should be reviewed six months before they attain the age of 50/55 years or complete 30 years of qualifying service." It was argued that the applicant had completed the age of 50 years on 3.4.86 and his order of compulsory retirement was passed on 21.7.87. He vehemently argued that the intention of rule 2046(h) or its corresponding Rule FR56(J) is that the Sword of Damocles should not be kept hanging perpetually over the head of a Government servant

to leading/demoralisation and to ensure that the officers can work in an atmosphere of security of service. He argued that once an officer is allowed to continue beyond the age of 50 years or completes 30 years of service, it is presumed that his services have been found satisfactory. He argued that since on the date of compulsory the applicant retirement, L was 51 years and 4 months old and the Review had been completed before he had attained the age of 50, he could not be considered as a dead wood and retired compulsorily as was done in the present case. He also referred to the various appreciation letters during his service career.

7. The record of the Screening Committee/Review Committee which were produced before us, were permitted to be seen by Senior/Junior counsel arguing the case of the applicant and the learned for applicant counsel took copious notes of the relevant record. He was also permitted to see the ACR of the officer concerned so that he is not prejudiced in any way in arguing the case of the applicant effectively.

8. After perusal of the relevant confidential records of the Government including the ACRs from 1982-87, the learned counsel argued that Government of India's own instructions clearly lay down that an average report could not be treated as adverse report.

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The learned counsel for the applicant repeatedly
the point
hammered that instead of launching Departmental
Enquiry for inefficiency and for other misconduct for
which letters had been sent to the applicant, the
respondents adopted the short-cut as it would be
evident from the G.M.'s letter to the Railway Board
where he disagreed with the recommendations of the
Chief Engineer, Northern Railway and recommended
compulsory retirement which in the ultimate analysis
was accepted by the Board and the President on the
recommendation of the Board. In this connection, he
cited 1986 ATC(1) 260 A. P. Jain Vs. U.O.I. para 4&5
p.262 case where the respondents adopted a short-cut
to Disciplinary Enquiry where grounds of misconduct were
alleged and when there is a stigma attached on the part of the
it was held that
employee there should be departmental proceedings and
not a short-cut in the form of compulsory retirement.
He further quoted 1987 ATC(2) p.424 (PB) Md. Islam Khan
Vs. Military Secretary to the President. In this case
also it has been held that power to use compulsory
retirement under FR.56(J) or any other corresponding
rule should not be used as short-cut to departmental
enquiries. In the present case, the learned counsel
for the applicant said that the respondents had alleged
misconduct of unauthorised absence and also of
carelessness in the maintenance of the tracks etc. and
as such a Departmental Enquiry should have been normally

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launched against the applicant. He also referred to 1990(12)ATC 423(PB) A. K. Ghatak Vs. U.O.I.. He further referred to 1986 ATC 496 SC Brijmohan Singh Vs. State of Punjab which emphasises the binding character of various instructions to be followed in case of FR.56(J). The learned counsel also quoted the various instructions issued from time to time by the Department of Personnel and Training for review of the cases of inefficient officers and also those of doubtful integrity and how time schedule has to be adhered to in these cases. He also quoted 1989(2) SCC 98 B. D. Arora Vs. C.B.D.T. where it has been laid down that uncommunicated adverse remarks cannot be taken into cognizance. He also quoted AIR 1990 SC 2055 R. P. Malhotra Vs. Chief Commissioner of Income Tax where it has been stated that, that a man cannot be retired if he has not been communicated the adverse remarks in his ACR on the basis of which the decision to retire compulsorily is being taken. On the basis of the various rulings cited, he summed up by saying that the entire service record which ought to have been taken into consideration, has not been taken into consideration and only remarks from 1983-86 have been the foundation for compulsory retirement of the applicant and no cognizance of the remarks ^{recorded} in his ACRs for the previous periods when the applicant got appreciation letters and commendations from his superior officers.

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has been taken and he also summed up by saying that by resorting to compulsory retirement, the respondents have denied the safeguards of Article 311(2) and Railway Servants Discipline and Appeal Rules. He called the decision perverse and arbitrary. The learned counsel for the respondents, Shri N. S. Mehta stated that the Court can only interfere in the case of compulsory retirement when it is a case of no evidence or the decision is arbitrary or perverse. No malafide has been alleged against anyone and therefore there is no question of respondents harbouring any malice of prejudice against the applicant.

9. We have carefully considered the facts and circumstances of the case and we have also carefully studied the ACRs and perused the report of proceedings of the Screening Committee/Review Committee.



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Vide his confidential Note No.347/G-V dated 18.2.87

the General Manager sent a note which reads:

"2. The assessment in the Confidential Reports earned by Shri Tandon during his service in J.A. Grade is as under:

- 31.3.1983 - Average/Requires more experience
- 31.3.1984 - Average/Not fit
- 31.3.1985 - Average/Not fit
- 31.3.1986 - Average/Not Fit

While working as DSE/Bikaner, a letter of displeasure was issued on 30.8.1983 to him by C.E. of this Railway for allowing the track under his jurisdiction to deteriorate (copy of letter alongwith C.E.'s Inspection note dated 16.8.1983 is attached).

3. Shri R. K. Tandon is in the habit of leaving his Headquarters without permission and availing leave without proper sanction. His explanation was called for vide this office letter No.726-E/670-11(Eia) dated 15.9.86(Copy attached).

4. Taking into consideration the unsatisfactory record of service of Shri R. K. Tandon, it is recommended that he may be retired from service under Clause(h) of Rule-2046 of the Indian Railways Establishment Code Vol.II."

This letter has also enclosed various confidential

letters sent to the applicant from time to time

regarding his unauthorised absence and

various acts of omission and

commission. As way back as August, 1983, the Chief

Engineer sent his Inspection Note to the applicant

informing him that he is not taking adequate interest

in his work and was not working diligently and that he

allowed the condition of the track to deteriorate and

that he has shown extreme laxity in implementing the

various instructions sent to him from time to time.

It was further said that maintenance was badly delayed

and a large number of fastenings in track were found

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missing during the inspection and that portion of track said to have been thorough-packed had serious defects. It was also mentioned that precious man-days were lost by the gang, encroachments were increasing, track record was not properly maintained, and ballast lying on long lengths had not been introduced into the track, relaying is done without provision of adequate ballast cushion, water was also found on the platforms and the work of PWIs/gangs was not being controlled adequately. This also encloses long list of failures of the applicant at pages 6 to 8. On the basis of very poor maintenance of track, inefficiency, carelessness, negligence etc. and also in view of unsatisfactory record of service and in view of the recommendations of the General Manager, Northern Railway for compulsory retirement in terms of Rule 2046 of the Indian Railways Establishment Code Vol. II and in view of adverse remarks about his work and conduct, the Screening Committee recommended his compulsory retirement which was duly endorsed by the Review Committee on the basis of which, the President accepted the recommendations of the Board and retired the applicant compulsorily from service. Representations filed by the applicant against the order dated 21.7.87 retiring him from service prematurely under Rule 2046(h) of the Indian Railway

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Establishment Code Volume-II, was rejected by the Board and the competent authority and the same was duly communicated to him. The remarks for the periods from 31.3.82 31.3.87 are quoted below:

- "31.3.82 .. Good/Fit
- 31.3.83 .. Did not apply himself diligently to work. Needs to supervise work of track maintenance much better.
- 31.3.84 .. Average/Not fit
- 31.3.85 .. He is an officer of average capability. He should be tried in some less responsible job. Average/Not fit.
- 31.3.86 .. An officer of average capability and can deliver goods only with constant goading and supervision by higher ups. Is in the habit of leaving Headquarters without proper permission for which he was reprimanded several times verbally as well as in writing. He has since been transferred from the post and posted in Hq's office to give him a chance for showing effectiveness. Average/Not fit.
- 31.3.87 .. A very fat person who cannot walk properly and has difficulty in seeing too. He is very fond of eating and overtakes. He is sluggish and self-centred with no intention to do justice to his work. He has hardly any ability worth a mention. He is a liability to the administration and a pain in the neck. He only creates complications for the administration.
- A self-centred officer with no intention to do justice to his work. He has hardly any ability worth a mention. He only creates complications for the administration.
- Below Average/Not fit."

10. The various rulings of the Hon'ble Supreme Court neither in this regard are that the ACRs have to be ignored and nor sole reliance to be placed on them. of I.R.E.C. Rule 2046(h) Vol. II is a correspondent rule of FR 56(J)

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and these ruled have been made under priviso to Article 309 of the Constitution and the various orders and instructions issued under the Rules also have the force of statute. A perusal of OM No.250313/14/77-Estt(A) dated 5th January,1979 issued by Ministry of Home Affairs, Department of Personnel and Administrative Reforms lays down the principles and the criteria, procedure and guidelines to be followed under FR.56(J) corresponding to Rule 2046(h) of I.R.E.C. Vo.II and both these rules envisage the procedure and guidelines to be followed under these rules. The aforesaid circular clearly lays down that the decision regarding premature retirement on the basis of unfitness or incompetence or ineffectiveness or doubtful integrity must be assessed in bonafide manner and the orders must be passed purely in public interest. The same spirit is maintained in Civil Services Regulations No.459 and also of Rule 43 and 48 of Central Civil Services (Pension) Rules, 1972. This OM has been further supplemented by another OM.25013/30/85-Estt issued by the DoPT dated 7.8.85 and this OM is solely devoted to premature retirement of Central Government servants and the guidelines which have to be followed. OM of 5th January, 1978 of Department of Personnel lays down that the entire service record of an officer should be considered at the time of Review. It is further

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stated that review should however give emphasis on consideration of the ACRs for the five preceeding years or to the period in the higher post in case of promotion within the period of five years only where retirement is sought to be made on grounds of ineffectiveness or inefficiency. The matters found in the Personal File of the officer concerned are also to be scrutinized and in this case the various extract of the Inspection notes of the various works entrusted to the applicant are to be noted. The judicial pronouncement are also to the effect that personal assessment of the officer as reflected from dossiers, should be taken into account for premature retirement. In the case of Brijbehari Lal Vs. State of MP AIR 1981 SC(594) it was held that the uncommunicated adverse remarks need not be taken into account except when they reflect on the integrity of an officer. In the case of R. L. Butail Vs. U.O.I. it has been observed, "Contention, therefore, that the adverse remarks do not contain specific instructions, are therefore contrary to the rules cannot be sustained. Clearly unsustainable is the corollary that because of the omissions, the appellant could not make an adequate representation and that therefore the orders are vitiated." All actions taken in public interest have been sustained by the Hon'ble Supreme Court

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and they have not questioned the right of the Government to retire an officer prematurely under FR56(J) or Rule 2046(h) Vol. II of I.R.E.C. applicable to the Railway employees provided the decision is a bona fide one and there is no arbitrariness involved. If the decision is in the public interest and not actuated by mala fide, the Court, by and large, have refused to interfere. In J. N. Saxena's case 1967, the Hon'ble Supreme Court held that it is none of the job of the Courts to do research work in Secretariat files to draw inference of stigma when there are no expressed words, in the order which would cast stigma on the Government servant. In case of UP Vs. M. M. Nagar (1967) 2 SCR 496 where the officer was retired because he had outlived his utility, the same principle was propounded and it was further strengthened in the case of J. N. Saxena Vs. State of MP 1967 2 SCR 496 at page 501. The Appointing Authority may require the Government servant to retire prematurely after he attains the age of 50 years or completes 30 years of qualifying service provided no stigma is attached in the order. The Courts are not required to delve in the Secretariat files to do research work in order to infer stigma where there is none. This has been the consistent view of the Hon'ble Supreme Court. If the order of compulsory retirement before the age of superannuation contains no words of stigma, it cannot be a removal requiring action under Article 311. This was further clarified in Dhaba Case (1969) where another Bench of three Judges

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comprising Chief Justice Shah, Ramaswamy and Grover J.J. relying on decisions in Dhingra, Champak Lal and J. N. Saxena(Supra) also confirmed the view taken by the previous Benches of the Hon'ble Supreme Court.

11. Protection of Article 311(2) and the safeguards provided in the CCS(CCA) Rules(Railway Servants Discipline and Appeal Rules) specially Rule 14 and 15 of the aforesaid rules have no application in the case of compulsory retirement, if the decision has been taken on the basis of evidence and that is a bonafide decision in public interest. The Courts can interfere only when the decision is arbitrary or perverse, or, it is a case of no evidence. This view was firmly profounded in U.O.I. Vs. Col. J. N. Sinha(1970) 2 SCC 458 para 8&9. This view has been reiterated in JT 1992(2) SC 1 Baikunth Nath Das and another Vs. Chief DMO, Baripada. It has 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 the 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. Courts can interfere only when:
 - i) the order is mala fide, or
 - ii) when it is a case of no evidence, or
 - iii) 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 perverse.

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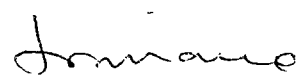
- (iv) The Government/Review Committee as the case may be, shall have to consider the entire record of service before taking a decision in the matter, of course attaching more importance to the record and performance during the later years. If the officer has been promoted, the record of service particularly during the period of promotion will be more relevant. The record of service means the entries in the Confidential Records/Character Rolls both favourable and adverse.
- (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 the basis for interference. Interference is permissible only on the grounds mentioned in column(iii) above.

12. The law on the subject of compulsory retirement has been made crystal clear in Baikunth Nath Das and another Vs. Chief DMO, Baripada. In the case of the applicant, a perusal of the ACRs during the period when he was promoted as Deputy Chief Engineer in the Junior Administrative Grade, his performance has been adversely commented upon right from April, 1982 to 31.3.86. The remarks after his retirement is much more damaging but they cannot be considered as a part of remarks which were taken into consideration by the Screening/Review Committee. The maintenance of track is a very important job and if the tracks are not maintained properly, derailment would take place resulting in

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serious casualties of passengers and during the inspection the Chief Engineer has found serious deficiencies in regard to the performance of the applicant and he also drew his attention to these various defects in the tracks which he had found during the course of his inspection. The General Manager, the Screening/Review Committee were unanimous in their view in regard to the carelessness, negligence and inefficiency on the part of the applicant. The General Manager also while recommending the case of the applicant for compulsory retirement, has enclosed the various deficiencies pointed out by the Chief Engineer in the course of his inspection. The material on record are enough to warrant compulsory retirement of the applicant. By his work and performance, he had proved that he had outlived his utility, and as such, the respondents had no option but to retire him. The order is neither mala fide nor it is a case of no evidence since there are enough materials on record to prove that he had become a dead wood and also that the decision is neither arbitrary nor perverse and as such it does not call for any interference from this Court and accordingly the application is dismissed as devoid of any merit, leaving the parties to bear their own costs.


(B. K. Singh)
Member (A)


(J. P. Sharma)
Member (J)

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