

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

DA NO.2014/88

DATE OF DECISION:24.8.90.

SHRI R.P. SINGH

APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

RESPONDENTS

SHRI B.S. MAINEE

ADVOCATE FOR THE APPLICANT

SHRI S.N. SIKKA

ADVOCATE FOR THE RESPONDENTS

CORAM:

HON'BLE SHRI T.S. OBEROI, MEMBER (J)

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

JUDGEMENT

(DELIVERED BY HON'BLE SHRI I.K. RASGOTRA, MEMBER (A))

The applicant Shri R.P. Singh, who was working as Chief Inspector Tickets (Head Ticket Collector), Northern Railway, Tundla Junction has filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the order No.831/EAC-1/Retirement dated 17.7.1987 of the respondents, retiring him prematurely from railway service under Rule 2046 R-II, with three months pay and allowances, in lieu of the notice period. The applicant has contended that he has been working as Chief Inspector Tickets (Head Ticket Collector) in the grade of Rs.550-750 (Rs.1600-2660) w.e.f. 1.1.1984. While his work was generally satisfactory, he admits that penalty of withholding of increment temporarily, for a period of one year was imposed upon him in 1982 and adverse entries in the confidential report for the period 1.4.1984 to 31.3.1985 were communicated to him on 24.6.1986. Notwithstanding, these adverse circumstances, he submits that

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his services were appreciated and commended by the Assistant Commercial Superintendent, his immediate superior, vide his letter dated 4.8.1983 copy of which was sent to Senior Divisional Commercial Superintendent, Allahabad. In the commendation letter ibid the ACS/Tundla has dwelt upon at considerable length the all round improvement, the applicant brought about in the functioning of the Tundla Station. The applicant has also alleged that the then Senior DCS Shri K.K. Gupta had given him adverse report (although he was not competent to write the report for the period in question), as he had not carried out his instructions for charging the without-ticket passengers from the originating station of the train, instead of from the last checking station. He had brought the relevant instructions to the notice of Senior DCS that charging of without-ticket passengers from originating station of the train was not permissible under the rules. The applicant alleges that the Senior DCS carried a vendetta against him on this ground.

2. The respondents in their written reply have submitted that the working of Shri R.P. Singh, applicant, was far from satisfactory and that he was given adverse confidential reports for the period 31.3.1980, 31.3.1985 and 31.3.1986. The adverse entries in all the three reports were communicated to him but he had not made any representation against the adverse remarks. The personal allegation levelled by the applicant against Senior DCS is also not germane to the issue as the Sr. DCS, Shri Gupta had merely communicated the report for the period 31.3.1985 and not written the report. It is further submitted that the applicant has been prematurely retired from service in public interest on the recommendations of the Review Committee comprising of Junior Administrative Grade Officers with the approval of the Chairman of the Review Committee.

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3. The guidelines laid down in the Railway Board's confidential letter No.E(P&A)-1-77/RT-53 dated 13.11.1979 for dealing with the case of premature retirements provides that Railway servants belonging to Class-III can be prematurely retired after they have attained the age of 55 years in terms of Rule 2046(8)-R-II. In addition a Class-III Railway servant, who is not governed by any pension rules can also be retired after he has completed 30 years of service under Rule 2046(K). Provisions also exist in paragraph 620 of the Manual of Railway Pension Rules, 1950 for retiring a Railway servant by giving him three months notice, if it is necessary to do so in public interest, after he has completed 30 years of qualifying service for pension. The powers to retire a Railway servant prematurely vested in the appropriate authority, however, are to be exercised fairly and impartially and not arbitrarily. In pursuance of the objective of strengthening of Administration the following criteria has been prescribed for the Review Committee constituted for determining whether a Railway servant should be retained in service or retired prematurely:-

- (a) " an officer whose integrity is doubtful will be retired;
- (b) officers who are found to be ineffective will also be retired. The basic consideration in identifying such officer should be fitness/competence of the employee to continue in the post which he is holding. If he is not found fit to continue in his present post, his fitness/competence to continue in the lower post, from where he has been previously promoted, should be considered.
- (c) While the entire service record of an officer should be considered at the time of review, no officer should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years or where he has been promoted to a higher post during that 5 years period, his service in the higher post has been found satisfactory.
- (d) No officer should ordinarily be retired on ground of ineffectiveness, if in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case."

The guidelines further envisage that in a case where it is proposed to retire a Railway servant the "appropriate authority" should record in the file that it has formed its opinion that it is necessary to retire the Railway servant in pursuance of the aforesaid rule (s) in public interest. This provision has been specifically made in accordance with the observations of the Hon'ble Supreme Court in the case of Union of India vs. J.N. Sinha 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 and that this decision should not be an arbitrary decision or should not be passed on collateral grounds." In summary, the criteria provides for retirement of officers with doubtful integrity and officers who are ineffective. Further, if an officer is found ineffective for the job, which he is holding, the Review Committee has to determine his fitness/competence to continue in the lower post from where he was previously promoted.

4. The respondents were directed to produce relevant records on 21.2.1990 and final arguments of the case were completed on 24.7.1990, without submitting the relevant records. Further time was given to the respondents on 25.7.1990 and 13.8.1990 to submit the relevant records to the Court. Till date, however, this has not been done. We, therefore, proceed on the basis of the material placed before us.

The learned counsel for the applicant had contended that the respondents while taking the decision to retire the applicant prematurely have not considered the entire record in order to form an opinion that it would be necessary to retire the applicant in public interest. Even three months' pay, which is required to be paid at the time of premature retirement was not paid to him. Only arrangements for such payment were made. The learned counsel cited the following

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case in support of his case:-

1. 1982 (3) SLR Ghola Ram Vs. Lt. Governor, Delhi Admn. Delhi.
2. 1 (1988) ATLT (CAT) 436 - Dinendra Kumar Mitra Vs. U.O.I & Ors.
3. 1 (1987) ATLT 81 H.C. Gargi Vs. State of Haryana.
4. 1981 (3) SLR - Baikunthanath & another Vs. Dt. Medical Officer, Beiripada and others.
5. ATR 1986 (2) CAT 464 - A. Muthuswamy and Ors. Vs. The Divisional Personnel Officer, Southern Railway & Ors.
6. II (1990) ATLT (CAT) 428 - Sewa Ram Jain Vs. UOI & Ors.
7. ATR 1987 (1) CAT 665 - Shri Kiran Chand Vs. UOI & Ors.
8. 1973 (2) SLR - J.R. Jain Vs. UOI & Ors.
9. (1987) 5 ATC 779 - P.C. Abrol Vs. UOI & Ors.
10. 1986 ATC 323 - R.P. Suri Vs. UOI & Ors.
11. 1987 (3) ATC 496 - Brij Mohan Singh Chopra Vs. State of Punjab.

While cases cited at S.No. 1-5 are relevant in this case, S.No. 6-11 do not seem to be of any assistance to the applicant.

The learned counsel for the respondents on the other hand, has relied on the following judicial pronouncement in support of the action of the respondents to retire the applicant prematurely:-

1. I (1989) ATLT (HC) 174 - Karnataka High Court - G.W. Ellis Vs. Hindustan Aeronautics Ltd.
2. II (1987) ATLT 61 - Kailash Chander Aggarwal Vs. State of MP.

While the case cited at S.No.1 is relevant, the case at S.No.2 does not seem to lend any strength to the respondents.

5. Having heard the learned counsel of both the sides and gone through the records, as available with us, we are unable to arrive at a definite opinion whether adequate grounds existed to retire the applicant prematurely in the public interest, on consideration of his entire service record. Notwithstanding, one aspect which is admitted is clear that the Review Committee does not appear to have



considered if the applicant was fit/competent to continue in the lower post from which he was promoted w.e.f. 1.1.1984. It was necessary in accordance with the respondents' instructions to consider this aspect and to give a notice in the prescribed form to the applicant advising that while he was not fit for being retained in the present post, he may be retained in the next lower post from which he was promoted and that his continuance in service beyond the age of 50/55 years or after completion of 30 years service, as the case may be, could be considered if he is willing to revert to the post held by him previously. The respondents' written reply does not bring out if such a notice was served on the employee before deciding to retire him, nor advocate Shri S.N. Sikka has brought out this aspect in his arguments.

In the facts of the case, we quash the order No.931/E/AC-I/Retirement dated 17.7.1987 ordering compulsory retirement of the applicant. The respondents are further directed that the applicant should be reinstated with all consequential benefits, with immediate effect.

There will be no orders as to the costs.

(Signature)
(I.K. RASGOPI) 24/8/90
MEMBER (A)

(Signature) 24/8/90
(T.S. OBEROI)
MEMBER (J)