

15

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A.NO. 593 OF 1988.

DATE OF DECISION : 9-8-1991.

R.D. Sharma.

.. Applicant.

v.

Union of India.

.. Respondent.

CORAM:

Hon'ble Mr. G.Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr. S.Gurusankaran, .. Member (A)

Shri G.D.Gupta, counsel for the applicant.

Sri P.P.Khurana, Counsel for the respondent.

S.GURUSANKARAN, MEMBER (A):

J U D G M E N T

The applicant's case is that his date of birth is 4-2-1937 and he joined the Central Government service as a Lower Division Clerk ('LDC') on 24-8-1955. Thus, his normal date of superannuation is 28-2-1995 and he has got another 7 years of service left. He has stated that the respondent has instituted one disciplinary proceeding against him on 18-8-1991 which is still pending. At the instance of the respondent, the CBI has implicated him in false cases which were filed in the Court of Ambala City and the same are pending before the Supreme Court in appeals filed by him. The respondent has also not paid him pay and allowances etc. from 17-10-1984 to 16-12-1986 on false allegations of absence without leave. Against this he has filed an application in O.A.No. 1754 of 1987 before this Tribunal. The respondent also did not fix the seniority of the applicant in Grade-C so far and against the same he has filed O.A.No. 1469 of 1987 before this Tribunal. The respondent has also withheld his pay and allowances from 1-1-1983 without any notice or memo. He has further stated that the respondent has managed to obtain adverse notes from the officers with whom the applicant was

40

16

attached as Personal Assistant with the sole object of weeding out the applicant under the Rules governing premature retirement. He has been served with the premature retirement orders on 6-4-1988 to take immediate effect by giving him a sum equivalent to the amount of pay and allowances for a period of three months'. The applicant has contended that the premature retirement orders are mala fide and even though it is an order simplicitor, the evil intention of the respondent could ^{be} found by piercing the veil. He has pointed out that it is well settled that the orders of premature retirement during the pendency of the disciplinary proceedings as well as pendency of the proceedings before the Tribunal is mala fide.

2. The respondent has stated in his reply that the case of the applicant was submitted to the review committee for assessing his suitability or otherwise for continuance in service in terms of relevant Rules after he has attained the age of 50 years. The review committee after considering his case on the basis of the service ^{and other} records, recommended that he may be retired prematurely from Government service and the same was accepted by the competent authority. Hence, he was served with the order dated 6-4-1988 retiring him prematurely with immediate effect along with three months pay and allowances. This was sent to him through a gazetted officer and the applicant refused to receive the same which was witnessed by the two other gazetted officers. Thereafter the said order was sent to the applicant by registered post at both the addresses known to be his residential addresses; one of the registered covers has been received back undelivered while the second has been delivered duly. Hence, his premature retirement became ^{effective} ~~effect~~ from 7-4-1988, the date following the date of his refusal by him to accept the order of retirement. This has been admitted by the applicant during the course of preliminary hearing before the Tribunal on 17-5-1988. It is mentioned that there are two disciplinary proceedings pending against the applicant

A R

and not one as mentioned in the application. The respondent has refuted that the case was instituted by the CBI at ~~his~~ instance. The applicant was not paid his pay and allowances for the period from 1-12-1984 to 15-12-1986 as he remained absent from duty unauthorisedly during the said period. The seniority of the applicant in Stenographer grade was fixed correctly in accordance with the Rules. The pay and allowances of the applicant have not been paid from 1-1-1988 onwards as he was again reported to be absenting himself from duty unauthorisedly. They have pointed out ^{that} the action taken under Rule 56(j) of the Fundamental Rules is not a punishment, but administrative action taken in the public interest. The proper procedure has been adopted and the right to retire the applicant in public interest has been exercised fairly and impartially after objective consideration of his service ^{and other} records and has nothing to do with the other cases pending before the Tribunal.

3. The records relating to premature retirement of the applicant were produced by the respondent. As requested by the learned counsel for the applicant, the same were also shown to him for perusal. The learned counsel pointed out that the applicant was promoted from Stenographer Grade-III to Grade-II on officiating basis in 1978 and on regular basis from June, 1980. Hence, he stressed that the adverse entries prior to 1978 will not have any material effect for arriving at a conclusion to prematurely retire the applicant. For the same reason, he contended that the punishments inflicted before 1978 should be treated as stale entries having no bearing on the decision for premature retirement. He pointed out that the recommendations of the review committee are mainly based on adverse entries and punishments imposed prior to 1978; in fact the Confidential Report for 1981 is just satisfactory. Regarding the remarks that no confidential report could be written for ^{various} ~~varied~~ periods in 1980, 1982 and for the whole years of 1984, 85 and 1986, he

4

submitted that it is the responsibility of the respondent to have got the reports written and it is not the fault of the applicant. He vigorously argued that one of the disciplinary proceedings pending against the applicant is regarding his unauthorised absence and that it is well settled that specific allegations of misconduct cannot be relied upon for prematurely retiring Government servant so as to short-circuit the procedure. He referred to the decision in the case of MOHD. ISLAM KHAN v. MILITARY SECRETARY TO THE PRESIDENT OF INDIA AND OTHERS [(1987) 2 A.T.C. 424].

4. The counsel for the respondent argued that the records produced before the Tribunal themselves prove that the action to prematurely retire the applicant was ^{not} mala fide, but only based on the service ^{and other} records of the employee as not only reflected by his confidential reports but also other connected records regarding his behaviour and performance. He stressed that the records clearly prove that it is not in public interest to continue the applicant in Government service.

5. We have heard both the parties and perused the records. While it is true that most of the punishments and adverse entries in the confidential reports relate to periods before 1978 and it is an accepted principle that normally the confidential reports and punishment imposed after such promotion should only be taken to decide whether a Government servant has become a dead wood, the competent authority is not precluded from going through the entire service record. We find that the review committee has noted the fact that there were disciplinary proceedings pending against him. They have also referred to various records relating to his performance after 1978 like his being granted 217 days "leave not due" in December, 1983, rejection of certain allegations made by the applicant at the level of the Home Secretary, complaints from almost all officers with whom the applicant was posted about his not attending office, punctuality.

etc. We do not agree with the contention of the applicant that the respondent is responsible for not having written the confidential reports for various periods in 1980, 1982 and for the whole years in 1984, 1985 and 1986. It is very clear from the records that since the applicant was frequently absent and because of the complaints of officers, he had to be frequently posted under various officers, under whom he did not work for three months continuously, that the confidential reports could not be written. Hence, we are convinced that the review committee has based its recommendations on the basis of the records available after 1978, while also noting his performance as reflected in his entire service record. In the case of UNION OF INDIA AND OTHER v. INDRAJIT RAJPUT [(1991) (16) ATC 510] the Supreme Court have observed "the question for decision by the Tribunal was whether the bona fide decision of the competent authority to compulsorily retire the respondent on the basis of its opinion formed on this material was liable to be set aside by it? It is in this perspective that the Tribunal had to consider and decide the matter...." Thus, we find in this case the competent authority has based its bona fide decision on the available records and hence, this is not a matter in which this Tribunal can interfere.

6. In view of the above, we find no merit in the application and the application is dismissed.

[Signature]
9/8/1991
MEMBER (A)

[Signature]
9-8-1991
VICE-CHAIRMAN.