

(3c)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 69/88

DATE OF DECISION: 5.9.1991

SHRI J.P.S. CHOUDHARY

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

CORAM:

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

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

FOR THE APPLICANT SHRI S.S. TIWARI, COUNSEL

FOR THE RESPONDENTS SHRI P.P. KHURANA, COUNSEL

JUDGEMENT

(DELIVERED BY HON'BLE MR. T.S. OBEROI, MEMBER (J))

This Original Application was earlier decided, ex parte, because of respondents having not appeared, nor filed along their counter, with the record called for, in spite of a number of opportunities, including a notice served through a special messenger, having been given for the purpose. This ex parte order was passed on 25.7.1989, by a Bench comprising of Hon'ble Mr. P. Srinivasan, the then Member (A), since retired, and one of us (T.S. Oberoi, Member (J)). This was, however, set aside, on a miscellaneous application having been filed on behalf of the respondents, vide judgement dated 31.8.1989, by another Bench, comprising of Hon'ble Mr. B.C. Mathur, the then Vice Chairman, also retired, and the same Member (J) for the reasons detailed in the said judgement. Thereafter, counter was filed on behalf of the respondents, and though the filing thereof was opposed by the learned counsel for the applicant, the latter also filed rejoinder thereto.

2. It is a case of pre-mature retirement under FR 56 (j). Applicant's case is that after serving in Army for nearly 6 years, he joined as a Lower Division Clerk in the Central Excise Department, in Uttar Pradesh, and on account of his hard work and sincerity, was promoted firstly,

as an Upper Division Clerk, and later, as an Inspector, in the said Department, in the year 1976, and thus, his steady progress, in this manner was indicative of the fact that his record was good. Further according to him, he did well in Central Excise Department as well, till 1982, before his posting as an Inspector, Incharge at M/s Prag Vanaspati Products Limited, Aligarh and during this tenure of his service here, he developed some difficulties not on account of his making, but due to his inviting wrath of his superiors, on account of the proprietors/management of the said concern, being thick with the departmental officers, who got annoyed with him, because of his exercising harder check on the activities of the said concern, in order to plug pilferage of Government revenue. His case further is that on account of same, he was transferred to a comparatively unimportant place i.e. at Mathura Refinery, which was regarded as a punishment posting. Here too, according to the applicant, he tried to do his best but on account of the unhappiness of his departmental officers because of the earlier episode with M/s. Prag Vanaspati Products, incurred by him, he could not escape the effects thereof, so-much-so that he was harassed, by not paying his T.A. in time, and also some other departmental pin-pricks, to which he was subjected to. His efficiency bar which was normally due w.e.f. 1.1.1983, was not allowed to be crossed in time, and also, copies of certain documents, which he had asked for, in order to send replies to the departmental communications, were not supplied to him. He was also subjected to a disciplinary proceeding, for claiming Travelling Allowance twice, but the same was later on dropped on acceptance of his explanation in this regard. Again, during the year 1986, he was chargesheeted and a punishment of censure awarded to him, but not only that his representation against the same has not been decided so far, but also, as it is, it was not serious enough, so as to entail the action for his premature retirement, on the basis of that. The adverse remarks in his Annual Confidential Reports for 1984-85 could

also not be used against him, for want of finalisation of his representations sent against the same. Further, in one of the reports, a remark that the applicant did not hold a good reputation in the trade, was given but on his asking for copies of the documents, on which it was based, the same were not supplied to him so far, intimating that they ^{remarks} were based on the general impression of the Reporting Officer.

Another cause of grouse against him was as to why he corresponded directly with the superior officers, for copies of documents concerning the matter regarding M/s Prag Vanaspati Products Limited. In this respect his plea was that his immediate superior, had himself intimated that his representation for copies of documents, had been referred ^{quarters} to head office (page 49 of the paper book), and as the same brought forth no response, after lapse of sufficient time, he made a representation, in that regard, to the headquarter office. For similar reasons, according to him, the matter relating to M/s Prag Vanaspati Products, was brought by him, to the notice of high-ups. Thus this also showed the prejudice of the departmental officers against him, firstly for not supplying him the desired copies of documents, and after a good deal of correspondents for the same, just intimating that the matter was referred to the headquarters and when he took up the matter with the latter, with copy to his immediate ^{superiors} senior, he was hauled up as to why he corresponded directly.

The applicant also complained of prejudice of his departmental officers, on account of the fact that some inadmissible ^{material} information was put up before the Review Committee, which recommended his premature retirement under FR 56 (j), such as the ACRs for the year 1984 to 1986, which, for the reasons earlier stated, could not have formed the basis for considering him to retire prematurely. Similarly, crossing

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of the Efficiency Bar having been eventually allowed, the same stood testimony to the fact that everything adverse reported against him got wiped out, and also that the withholding of the Efficiency Bar could not have been one of the basis for the Review Committee, to recommend his premature retirement. In this connection he relied on:

- (i) **1989(2) ATLT SC 368 - Baidyanath Mahapatra Vs. State of Orissa and another;**
- (ii) **ATR 1970 SC 2086 - State of Punjab Vs. Dewan Chunilal**

The applicant also put forth the plea that though as per Government of India instructions, on premature retirement, action ought to have been initiated by the respondents, six months before his attaining the age of 55 years, this was done when he was nearly 56 years, showing the hesitancy ^{themselves} on the part of the respondents, about the same being initiated against him. For all these reasons, the applicant claimed for setting aside the order of his premature retirement, with all consequential benefits to him.

3. The respondents vehemently opposed the applicant's case by referring to his record, right from the inception of his career in the Central Excise Department. Elaborating the same and, by referring to the extract of his ACRs forming part of the counter in para 6.36 thereof (page 131 and 132 of the paper book), it was urged that not a single good report was earned by the applicant during his career commencing from October, 1958 to the date of his premature retirement, and while 3 reports pertaining to the year 1984, 1985 and 1986 were adverse, the earlier reports were either 'average' or 'just adequate' and having been given by different officers, who must have supervised his work during this period, there could hardly be any scope for prejudice, in the assessment thereof. It was thus urged that his was a case of complete 'dead wood', besides the applicant not enjoying good reputation, as opined in one of his ACRs, and therefore, his having been retired prematurely, was in accordance with the two planks

for retiring a Government servant under FR 56(j). It was further urged that the Review Committee formed its opinion on the basis of the record which could not be substituted by that of this Tribunal, and that, ^{there was complete} absence of any hostility or prejudice, on the part of the departmental officers, as alleged by the applicant. Reliance was placed on **1990 (12) ATC 896 - C.D. Ailawadi Vs. Union of India & Ors.** and **1988(2) SCALE 800 - Jayanti Kumar Sinha Vs. Union of India & Ors,**

in support of the contentions, in this regard. It was also urged on behalf of the respondents that a Review Committee ^{having} based its recommendations on the basis of cogent material, this Tribunal is not expected to substitute its opinion with that of the recommendations of the Review Committee, unless there is arbitrariness or some other collateral reasons. Regarding the crossing of the Efficiency Bar, allowed in 1989, it was contended that this was entirely a different matter, as the disciplinary case against the applicant was over, the record which was put in sealed cover was opened and applicant was allowed to cross the Efficiency Bar w.e.f. 1.1.1983, on the basis thereof, and thus, it does not have any co-relation with sending the applicant on premature retirement under FR 56(j).

4. Rejoinder was also filed on behalf of the applicant, in which points earlier urged in the OA, were reiterated.

5. We have also heard learned counsel for the parties, who broadly highlighted the points, summed up in the preceding paragraphs, and need not be dilated upon again, to avoid repetition.

6. We have given our careful consideration to the rival contentions urged by the parties, and have also carefully perused their pleadings, the record of the proceedings of the Review Committee, and also the citations referred to by them, in support of their contentions. Being a case of

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premature retirement under FR 56(j), the applicant's case has to be adjudged from two aspects, namely, as to whether from the record of his service, he was ineffective or in other words 'dead-wood', and, secondly, whether he was not fit to be retained in service, any longer, from the point of view of lack of integrity, necessitating his premature retirement in public interest. As held in *Baldev Raj Chadda Vs. U.O.I & Ors* - 1980(4) SCC 321, though, in such a case, the entire service record of the Government servant concerned has to be reviewed, but in case a Government servant happens to do well in the last 5 years, his sending on premature retirement would not be justified, under FR 56(j). It was also held therein that any resort to the provisions of FR 56(j), in place of normal disciplinary proceedings against the Government official, would amount to a short cut and hence a bad cut, and therefore, not warranted or envisaged by law. In the instant case, out of the last 5 years' record, which covered years 1983 to 1987, as per respondent's counter, the applicant had adverse reports for 3 years of 1984-85-86, whereas the extract furnished therein, does not indicate the type of report earned by the applicant during the year 1983 and 1987, though the applicant claims the report for the year 1987 to be 'just adequate', and attributes the non-mention thereof in the record put up before the Review Committee due to mala fide reasons, on the part of the respondents, so as to let it go as 'adverse' in continuity of three earlier years. Further, from the perusal of the record, placed on record, and contentions urged by the applicant in the OA as well as in the rejoinder, the fact remains that applicant's representation for furnishing of the documents so as to enable him to challenge the adverse reports for the year 1984 and 1985 remain unattended to, and therefore, as held in '**Judgements Today 1987(1) SC 673 - Brij Mohan Singh Chopra Vs. State of Punjab and 1979 (1) SCR 518 - Gurdial Singh Fiji Vs. State of Punjab**', the same could not have been taken

into consideration by the Review Committee and, for the same reason, the conclusion arrived at, by the Review Committee in recommending applicant's premature retirement under FR 56(j), could be looked into or questioned by this Tribunal. Similarly, findings of the Review Committee passed inter alia, on grounds including that of not allowing to cross Efficiency bar by the applicant, at the appropriate stage which was eventually allowed, also cut at the correctness of the Review Committee's report. In the same, ^{strain} other material against the applicant with regard to alleged 'tainted' reputation in the trade circles, unsubstantiated with any record, which was asked for by the applicant, but not furnished to him, would make the Review Committee's report, as something not based on admissible data, and, therefore its propriety or otherwise, as one of the basis for premature retirement, could very well be looked into by this Tribunal. Judging applicant's record from his performance during the last 5 years, reports for two years remain to be 'just adequate', while those for the other three years, i.e. 1984 to 1987 were 'adverse,' but for the reason earlier mentioned, on account of applicant's representations against the same, having not been finalised, the same also could not have ^{been} taken into consideration, by the Review Committee, and for the same reasons, could not form the basis for recommending applicant's premature retirement, under FR 56(j). In this connection, it may not be out of place to mention that his earlier record from 9.10.1958 to 31.3.1975 was reported to be 'average' and from 1.4.1975 to 31.12.82, as 'just adequate' as distinguished from 'adverse'. We also find force in applicant's submissions that with allowing to him of the crossing of the Efficiency Bar, w.e.f.. 1.1.83, retrospectively, vide respondent's order dated 24.2.1989, a contradiction creeps in respondent's own case, as, on the one hand, they are allowing the applicant to cross the Efficiency Bar, vouchsafing his satisfactory record, while on the other, recommending him to be sent on premature retirement.

7. As a result of the foregoing discussion, we are not in a position to uphold the action taken by the respondents against the applicant, vide their impugned letter dated 4.2.1988 and in result, set aside the same. The applicant has, however, since attained the age of superannuation, his date of birth being 14.3.1932 and as such relief as claimed in paragraph 9(b) of the application, for putting him back on duty, has become infructuous. He, would, however, be entitled to all consequential benefits by virtue of setting aside the impugned order. It is also directed that necessary action in this regard, shall be accomplished by the respondents, within 4 months from the date of receipt of a copy of this judgement. There is, however, no order as to costs.

Salunkhe
(I.K. Rasgotra)
Member (A)

Deo
(T.S. Oberoi)
Member (J)

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