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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

D.A. No. 756 of 1988

Date of decision: 10th Dec 1988

Hon'ble Shri J. P. Sharma, Member (J)
Hon'ble Shri P. T. Thiruvengadam, Member (A)

Shri S. K. Saha
S/o Late Jatinder Nath Saha
C/o S. B. Biswas, A.S.C.
Railway Flat No.306 A
Vidyapith Complex
P.O. Maligaon
GUWAHATI-11
By Advocate Shri H. C. Kapoor
... Applicant

Vs.

1. Union of India
through Secretary,
Ministry of Railways,
Railway Board, Rail Bhawan,
NEW DELHI
2. General Manager
N.F. Railways
Maligaon
GUWAHATI-11
3. Shri S. K. Aggarwal
Ex. Chief Engineer
N.F. Railways
Maligaon
GUWAHATI-11
Presently posted at:
Chief Engineer,
Central (Northern Railway)
Head Quarter, Baroda House,
Northern Railway
NEW DELHI
... Respondents

By Advocate None

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OR D E R (ORAL)

Hon'ble Shri J. P. Sharma, Member (J)

The applicant was given compulsory retirement prematurely only nine months before reaching the age of superannuation by an order passed by the Railway Board dated 10th April 1987, conveyed to the applicant under his signature on 28th April 1987. The aforesaid order passed in public interest, was to take effect ~~immediately~~ ~~three months~~ hence from the date of service on the applicant and he was to get pay plus allowances for ~~in lieu of~~ ^{in lieu of} the ~~aforesaid~~ period of three months.

2. In the present application, filed on 27th April 1988, the applicant has prayed for quashing of the order with the direction in continuous service till 31.1.1988 with all consequential benefits of pay and allowances.
3. A notice was issued to the respondents to contest the case and in reply stated that under the provisions of Rule 2046(h) of the Indian Railway Establishment Code, Vol. II, the Railway Board had exercised its power of retiring the applicant prematurely as the applicant could not pull his weight and on the basis of the A.C.Rs. ^{At the} particularly from 1980-81 to 1985-86 when he was holding a gazetted post and of the earlier year 1975-76, 1976-77 and 1978-79 when he was holding a non-gazetted post, were considered and after reviewing the same, the Reviewing Committee had recommended premature retirement in public interest even after exhausting possibility to revert the applicant to the post in the lower grade.

4. We heard the learned counsel for the applicant, Shri H. C. Kapoor and none appeared on behalf of the

respondents. The matter has been on board and since it is an old matter, we proposed to decide the same on merit on the basis of the reply filed by the respondents assisted by the counsel for the applicant.

5. The applicant initially joined as an Apprentice P.W.I. in 21.6.1961. In the meantime, he had to go out in military service but he has been regularly working in the post in Railways since August 1964. He was last promoted as Assistant Engineer in January 1980.

6. The contention of the learned counsel for the applicant is that one Shri S. K. Aggarwal, respondent No.3, maliciously got his A.C.R. spoiled on account of some incident on 30th April 1986 when he got certain papers signed by the applicant without disclosing their contents and when he represented the next day on 1-5-86 that the said paper was destroyed, but the grudge was still subsisting with respondent no.3 which ultimately resulted in keeping a bias against the applicant and ultimately the impugned order of compulsory retirement has been passed.

7. It is also contended that the applicant had, during the course of his service, received commendation and at no point of time, the adverse remarks were conveyed to him which could have given a chance to the applicant to improve himself further. It is therefore argued that the impugned order is arbitrary, malafide and in the absence of relevant admissible evidence against the applicant.

8. We have gone through through the latest decision in the case - Baikuntha Nath Das Vs. Chief District Medical Officer, Baripada (A.I.R. 1992 S.C. 1020). That is a decision under Fundamental Rules, R.56(j), Orissa Service Code, Rule 71 which is analogous to the Rule 2046(h) of the Indian Railway Establishment Code, Vol. II.

9. The Hon'ble Supreme Court, considering the relevant law on the point and referred to various earlier decided cases, has summarised the scope of essential review against an order of premature retirement in para 32 of the Report, which is quoted below:

"(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 Govt. on forming the opinion that it is in the public interest to retire a 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. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) malafide, or (b) that it is based on no evidence, or (c) 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 a perverse order.

(iv) The Government (or the 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 record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(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 a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above. This object has been discussed in paras 29 to 31 above.

10. Taking the contention of the learned counsel for the applicant one by one of course, order of premature retirement has been passed w.e.f. 28-4-1987 vide order dated 10.4.1987 while the date of superannuation of the applicant is 31-1-1988 obviously nearer to his normal date of retirement. The rule in question provide that any time after the age of 55 years of the employment, there can be review in the interest of public whether the applicant may continue upto the age of 58 or he may be retired compulsorily. The order of premature retirement is not a punishment. It only cuts short the length of service. In the same cases pensionary benefits may be effected, but for that no grudge could be harboured as the pension is a by-product of the active service actually put in by the employee. The principles of natural justice are not applicable in such a case. The statutory rules and

guidelines have to be observed. Though when the applicant has continued to work even in the 57½ years of service, whether it was justified on the part of the Railway Board to pass the impugned order, is not the subject which we can probe. Efficiency in service is often judged by those under whom a person works. His personal and professional life is judged by those who are superior to him. On this account, we do not find a case for interference. Though the applicant may harbour a grudge obviously because especially 57 years 3 months he was judged as a person to be retained in service and thereafter he had been made to retire. The Tribunal, in such a case, cannot interfere.

11. The next contention of the learned counsel is that no adverse remarks was conveyed to him. We have referred to the learned counsel the averment made in their counter in ground (B), (C), & (D), in reply to the ground taken in the same paras in the B.A. We have also pin-pointed the reply in the rejoinder stated ~~xxxxxxxxxx~~ by the applicant in reply to the above paras of the counter. The cumulative impression on reading and analysing the same, leaves no doubt that the applicant has admitted doubt that his ACRs having been spoiled at the behest of the respondent No. 3. The respondents have clearly stated in para (B) & (C) of the grounds that the ACRs of the applicant continuously from 1975 onwards till 1984-85 had been perceived and the Review Committee on the basis of the same come to the conclusion that the applicant is not to continue in service having outlived his own utility in the public interest. Though we are

handicapped by non presence of respondent or their counsel and also by their relevant records in this matter, but the matter is sufficient on record to go to show that there was good piece of evidence before the Review Committee in coming to a ^{non} conclusion about the retention of the applicant further in service in the public interest.

12. The last contention of the learned counsel for the applicant is that commendation has been received by the applicant, but those by themselves cannot be set off against the remarks periodically recorded and review of the performance of the applicant.

13. The learned counsel for the applicant also laid more stress about the role of respondent No.3, Shri S. K. Aggarwal who was Chief Engineer in the year 1985-86 being at the helm of affairs when the impugned order came to light. Firstly ~~enigmical~~ intention of respondent No.3 is said to have emerged in April 1986. The remark of that year has not been taken into account. Unnatural things may happen. But the Court cannot take ~~presumptive inference~~ that such a ~~higher~~ officer will stoop to the level of asking his lower ~~staff~~ to give a particular remark to an officer of the grade of Assistant Engineer.

14. The case of the applicant has been gone through by the Review Committee and ultimately by the Railway Board. If we accept the proposition of learned counsel, Shri S. K. Aggarwal can be said of having a sway even ~~over~~ higher decision taking body of the Railways. We are unable to subscribe to this view.

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15. After having given a careful consideration to all these aspects, we do not find the case for interference.

16. The application, therefore, is dismissed as devoid of merit, leaving the parties to bear their own costs.

P. J. *Thirugengadam*

(P. T. Thirugengadam)
Member (A)

J. P. *Sharma*

(J. P. Sharma)
Member (J)

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