

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 248 of 1986
TxxxNo:

DATE OF DECISION 25th July 1986

Shri R.P.Suri

Petitioner

Shri J.S. Bali

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri Jagjit Singh

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Administrative Member

The Hon'ble Mr. H.P. Bagchi, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the Judgement ? N

(H.P. Bagchi)
Judicial Member

(S.P. Mukerji)
Administrative Member

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Regn. No. OA 248 of 1986

Date of decision: 25.7.86

Shri R.P.Suri

...Petitioner

Versus

Union of India & others

...Respondents

For Petitioner: Shri J.S. Bali, Advocate

For Respondents: Shri Jagjit Singh, Advocate

CORAM:

Hon'ble Mr. S.P. Mukerji, Administrative Member
Hon'ble Mr. H.P. Bagchi, Judicial Member

JUDGMENT:

The applicant, Shri R.P. Suri who has been compulsorily retired in public interest while working on deputation as Shop Superintendent in the Central Organisation for Modernisation of Workshop (hereinafter referred to as COFMOW) in the Indian Railways, has come up with his application under Section 19 of the Administrative Tribunals Act praying that the undated impugned order of premature retirement (Annexure-I to the application) may be set aside. He has also prayed that the Chittaranjan Locomotive Works (hereinafter referred to as CLW) may be directed to allow the applicant to retain his old accommodation or to give possession of the allotted accommodation in favour of his son and to refund the penal rent charged by them.

2. The brief material facts of the case which are not in dispute can be summarised as follows. The applicant joined the Indian Railways as Mechanist in 1950 and after ten promotions was last promoted as Shop Superintendent in

1982. He got two advance increments in 1950 and was rewarded in 1974 for his loyalty during the 1975 Railway strike. He got three more increments in 1974. On 22.2.1980, he was appointed on deputation as Assistant Shop Superintendent in the Central Organisation for Modernisation of Workshop (COFMOW) which he joined on 21.3.1980 and within 30 days of his joining he was promoted as Shop Superintendent in the scale of Rs.840-1040 on the basis of suitability test and review of records.

3. It appears that on his transfer to COFMOW in Delhi in March, 1980 the applicant continued to retain the residential Type 'C' Government quarters allotted to him at Chittaranjan and requested that his son Shri R.K. Suri who was employed there may be allotted a Type 'B' quarter and if that is not possible he may be reverted from COFMOW to CLW. The applicant was not allotted any family quarters in Delhi nor house rent allowance was allowed to him. In 1982, COFMOW informed the applicant that family quarters will be allotted to his son at Chittaranjan on medical grounds and the applicant was asked to vacate his quarters but the applicant insisted that his son should be given either the 'C' Type quarter to which the applicant was entitled or the next inferior type to which his son was entitled. An 'A' type quarter was eventually allotted to his son but he could occupy it as the same was under unauthorised occupation. The matter dragged on till December, 1985 when a charge-sheet was received from CLW by COFMOW for being served on the applicant for not vacating the Government premises at Chittaranjan. The charge-sheet was

not served by the COFMOW authorities on the applicant but was returned to Chittaranjan with the advice that the applicant's son may be given some suitable accommodation to enable the applicant to vacate the quarters in his possession. The petitioner had indicated earlier that because of his widowed mother, death of his son-in-law and mental health of his elder son, he was not in a position to vacate the Railway quarters at Chittaranjan. His request for house rent allowance was also turned down. The matter came to a head when he received a notice on 5.2.1986 from the CLW at Chittaranjan retiring him from Railway service with effect from 1.5.1986 on the expiry of three months from the date of service of the notice on the applicant. A copy of the notice has been annexed as Annexure I to the application. The notice is undated and is supposed to have been signed by the Additional Chief Mechanical Engineer.

4. According to the respondents, the applicant has been rightly retired under Rule 2046(h) as he had completed 30 years of service. It has also been mentioned that in 1967 he had been placed under suspension and given a minor penalty of withholding of one increment for a period of two years with cumulative effect on the ground of stealing Government material. It is admitted that he was given advance increments for his loyalty during the Railway strike in 1975. It is also averred that he was superseded as Shop Superintendent between 1977 and 1982 as he did not qualify in the suitability test. It is further stated that the petitioner has been in unauthorised occupation

of a 'C' Type quarter which had been allotted to him in Chittaranjan and after two months of his transfer to COFMOW, Delhi, no house rent allowance was given to him as he was in ~~an~~ unauthorised occupation of Railway quarters in Chittaranjan.

5. We have heard the arguments of the learned counsel for the petitioner and respondents and gone through the documents carefully. The argument of the learned counsel for the petitioner that being in pensionable service he could not be retired before attaining the age of 55 years even though he had completed 30 years of service, is not borne out by the Railway Board's Confidential letter No.E(P&A)-I-77/RT-53, dated 15.11.1979 a copy of which was produced by the learned counsel for the petitioner himself. Sub-para (3) of Section 1 under the heading 'Rules Position' of this letter reads as follows:-

"Provisions also exist in para 2(2) of Section 1 of Railway Ministry's letter No.E,48-CPC/208 dated 8.7.1950 incorporated as para 620 of the Manual of Railway Pension Rules, 1950, for the retirement of 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. In other words, a railway employee can be prematurely retired, irrespective of the age at the appropriate time, after he has completed 30 years of qualifying service, as explained above."

From the above, it is clear that irrespective of age, a Railway employee after completing 30 years of service can be retired in the public interest.

The learned counsel for the petitioner admits that the petitioner had opted for pensionary

benefits. The other preliminary objection raised by the learned counsel for the petitioner that his appointing authority being the General Manager, the impugned order of compulsory retirement could not have been passed by the Additional Chief Mechanical Engineer, is also not borne out by the orders relating to delegation of power in accordance with which all powers of appointment of Class III employees to which category the petitioner belongs have admittedly been delegated to the Additional Chief Mechanical Engineer.

6. A preliminary objection was raised by the learned counsel for the respondents that the applicant has not exhausted departmental remedies of appeal and review available to him before moving the Tribunal and thus the application is liable to be rejected under sub-section (1) of Section 20 of the Administrative Tribunals Act which reads as follows:

"A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances."

Though it is admitted that the applicant has not represented or gone up in appeal in the department against the impugned order, considering that he had been removed from service on compulsory retirement with three months notice and there is no statutory bar against moving the Tribunal in

the aforesaid sub-section and considering also that the application was admitted on 18.4.1986, we would not consider the objection raised by the learned counsel for the respondents as fatal to the application being considered by the Tribunal.

7. We had occasion to go through the Character Rolls entries of the petitioner during the crucial five year period from 1980-81 to 1984-85. During 1980-81, he got good reports against twelve items, average against two and fair against two. His integrity was certified but his limited technical knowledge was noted. His work was found to be satisfactory. During 1981-82, he got one 'very good', twelve 'good', two 'average' entries and his general assessment was good. He was found to be hard working but "his utility for M&P specification work is limited". His limitation of technical ability was noted. The adverse remarks about technical ability was communicated to him on 3.11.1982. During 1982-83, the petitioner got nine good entries, four average and one fair entry. His general assessment was good. He was found to be hard-working and prompt but it was noted "that his aptitude and technical abilities are not best suited for the type of work being done at COFMOW". During 1983-84, he earned eight good entries, three average and one fair entry and his general assessment was good. His ability on technical studies was found to be limited but his shop floor work was good. During 1984-85, he earned four very good, seven good and one fair entry. His general assessment was good and it was noted that he was more inclined to shop floor work.

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8. From the aforesaid analysis we are inclined to believe that there is nothing so adverse or derogatory in the CR entries as would render his retention in Government service adverse to public interest. It may be recalled that he was sent on deputation to COFMOW and within a month of his deputation promoted from Assistant Shop Superintendent to ^{the post of} ~~the post of~~ Shop Superintendent. Naturally, he would have taken some time to get into the stride of technical work of COFMOW in the higher posts. The very fact that he had been selected to be sent on deputation to this highly technical organisation also shows that the applicant must have possessed qualities equal to the task allotted to him in COFMOW. This itself would go to his credit. We would not have gone into the merits of the case about compulsory retirement of the applicant but for the fact that it had been repeatedly stressed by the petitioner in the petition and his learned counsel during the course of arguments that the impugned order of compulsory retirement emanated solely from the applicant's inability to vacate the Government quarters at Chittaranjan for the last four years. We had occasion to examine the file in which the Review Committee consisting of the Chief Personnel Officer and the Chief Mechanical Engineer (Works) came to the conclusion that it was in the public interest to retire the petitioner compulsorily. From the file, the following facts came out blatantly:

(i) No meeting of the Review Committee was convened or held.

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(ii) The Character Rolls of the petitioner for the years 1980 to 1985 was not put up before the Members of the Committee. Only a proforma sheet giving one-word-general assessment for each of these years had been put up to the Review Committee and ~~there was nothing written even in these~~ one-word-assessments.

(iii) The so-called misconduct of the applicant in not vacating the Railway quarters at Chittaranjan was repeatedly noted upon by the Deputy Chief Personnel Officer and the Chief Personnel Officer before sending the file to the Chief Mechanical Engineer.

9. Even a cursory reading of the few papers placed before us gave us an irresistible impression that the whole process of the solitary review of the ~~for permanent retirement~~ petitioner's case was taken up with the sole purpose of teaching him a lesson for not vacating the Government premises. In the above context, we ardently felt that in the interest of justice we will be failing in our judicial duties if we did not assess the element of public interest served in the impugned order. In ~~did~~ the above context we ~~do~~ not find ourselves overstepping our legitimate limits while looking at the CR entries of the petitioner and analysing the same. The Hon'ble Supreme Court itself in Union of India etc. Vs. M.E. Reddy and another, AIR 1980 Supreme Court 563, examined the C.R. entries of a retired officer in similar circumstances. We, therefore, feel that it is not improper for us in the interest of justice to go into the CRs to reassure ourselves that there has not been any colourable exercise of administrative discretion.

10. In Smt. S.R. Venkataraman Vs. Union of India AIR 1979 SC 49, the Hon'ble Supreme Court observed

as follows:-

"It is, however, not necessary to examine the question of malice in law in this case, for it is trite law ~~and~~ that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard C.J., in *Pilling v. Abergele Urban District Council* (1950) 1 KB 636 where a duty to determine a question is conferred on an authority which state their reasons for the decision, "and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter.

"The principle which is applicable in such cases has thus been stated by Lord Esher M.R. in the Queen on the Prosecution of Richard Westbrook v. The Vestry of St. Pancras, (1890) 24 QBD 371 at p.375:-

"If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

"This view has been followed in *Sedler v. Sheffield Corporation* (1924) 1 Ch. 483.

"We are are in agreement with his view. It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another.

"The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a

manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of Government servants only in the 'public interest', to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an abuse of power."

In the instant case also we are wholly satisfied that by not examining the Character Roll entries and by repeatedly keeping in view the alleged misconduct of the petitioner in not vacating the Railway quarter, the respondents have not exercised their discretion properly by ignoring the relevant material (character roll entries) which they should have considered and by being influenced by extraneous considerations (non-vacation of premises) which they should not have considered. A bare reading of the impugned order would also show that the competent authority had not applied his mind in retiring the petitioner on the ostensible ground of public interest.

11. Counsel for the petitioner urged that the impugned order made by the respondent suffers from the vice of non-application of mind inasmuch as it has not been stated in the impugned order that the power was exercised in public interest. There is substance in this contention. The attempt seems to be to merely reproduce the language of the rule without any attempt at bringing the case within the parameters of the relevant rule. The Hon'ble Supreme Court in Hans Raj Vs. State of Punjab and others, reported as 1985 SCC (L&S) 186 = (1985) 1 SCC 134, observed that reference to public interest in the return was an attempt at paying lip sympathy to the provision of the relevant rule rather than a serious application

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of mind while dealing with the career and the consequent starvation heaped upon the appellant by the impugned order. We are, therefore, satisfied that the order also suffers from the vice of non-application of mind.

12. As regards the respondents' reference to the minor penalty imposed by the respondents in 1968, the Hon'ble Supreme Court in Baldev Raj Vs. Union of India, AIR 1981 SC 70, had held that compulsory retirement held on the score of old happenings is bad. They held that 'the order of compulsory retirement fails because vital material relevant to the decision has been ignored and obsolete material less relevant to the decision, has influenced the decision. Any order which materially suffers from the blemish of overlooking or ignoring wilfully or otherwise vital facts bearing on the decision is bad in law. Likewise any action which irrationally digs up obsolete circumstances and obsessively reaches a decision based thereon, cannot be sustained. Legality depends on regard or the totality of material facts viewed in a holistic perspective.....'

13. The above observations apply with full force to this case also where it appears that the CR entries of five years immediately preceding the impugned compulsory retirement were not at all put up before the Review Committee or the competent authority and irrelevant facts about unauthorised occupation of Government premises were repeatedly churned up against the petitioner. A holistic view of the performance of the petitioner during the last five years preceding compulsory retirement does

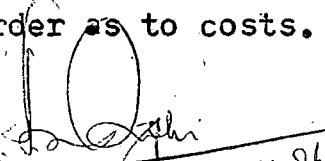
not produce a *prima facie* case of compulsory retirement in public interest.

14. We are also somewhat disappointed by the fact that the Review Committee does not have an outsider as a member who can temper the recommendations of the Review Committee with an element of detachment. In the review Committees established in the various Ministries, we are told one of the members is always from a body outside the Ministry itself.

15. In the facts and circumstances of the case, we find considerable merit in the application as regards the impugned order (Annexure-I to the petition) of compulsory retirement and quash the same with the direction that the applicant should be reinstated with effect from the date of compulsory retirement by treating his period of absence as on duty and this case may be reviewed by a reconstituted review committee with one member being an outsider of appropriate rank having nothing to do with the Railway Administration.

16. As regards the relief of the petitioner for being allotted Government accommodation in Delhi or house rent allowance in lieu thereof, we do not find any merit in the prayer of the petitioner so long as he continues to be in occupation of Railway quarters at Chittaranjan. The respondents have the various options open to them to proceed against the petitioner under the Public Premises (Eviction of Unauthorised Occupation) Act or to take up

disciplinary proceedings or to revert the petitioner to CLW at Chittaranjan etc. The question of charging penal rent from the petitioner is also a matter in which we do not find it desirable to intervene at this stage. The application is disposed of on the above lines. In the circumstances, there will be no order as to costs.


(H.P. BAGCHI) 25.7.86

JUDICIAL MEMBER


(S.P. MUKERJI) 25.7.86

ADMINISTRATIVE MEMBER