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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 890 198 6
T.A. No.

DATE OF DECISION 2.4.87

Shri Tulsi Dass

Applicant
~~xxxxxxx~~
Petitioner

Shri Umesh Mishra, counsel with
Shri R.R.Rai, counsel

Applicant
Advocate for the Petitioner(s)

Versus

Union of India & another

Respondents

Mrs. Raj Kumari Chopra,


Advocate for the Respondent(s)

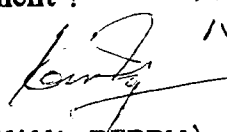
CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. B. C. Mathur, Vice-Chairman

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to all the Benches ? No


(B. C. MATHUR)
VICE CHAIRMAN
2.4.1987


(K. MADHAVA REDDY)
CHAIRMAN
2.4.1987

CENTRAL

ADMINISTRATIVE
PRINCIPAL BENCH
NEW DELHI.

TRIBUNAL

REGN. NO. OA 890/86

Dated: 2.4.1987

Shri Tulsi Dass

Applicant

Vs.

Union of India & another

Respondents

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. B. C. Mathur, Vice-Chairman

For the Applicant

Shri Umesh Mishra, counsel
with Shri R.R. Rai, counsel.
Shrimati Raj Kumari Chopra,
counsel.

For the Respondents

(Judgement of the Bench delivered by Hon'ble
Mr. Justice K. Madhava Reddy, Chairman)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the Applicant calls in question the order of compulsory retirement dated 8.10.86 made by the Respondents. The short question that falls for consideration in this Application is whether the Applicant, who had initially come on deputation to the Central Government from the Rajasthan State Government Service in 1973 and was absorbed in the Central Government service in 1976 permanently, when he was already above 35 years could be compulsorily retired under F.R.56(j). The few facts necessary for the appreciation of the contentions raised by the Applicant may be briefly noticed. The Applicant joined the Central Hindi Directorate, Ministry of Education, Government of India as Research Assistant. He resigned from that post in 1963. He was later appointed as Lecturer in Hindi in the Government College under the State Government of Rajasthan. He worked there till 1973 when on being selected by the Union Public Service Commission, he was appointed as a Supervisor in the Hindi Teaching Scheme, Ministry of Home Affairs, Govt.

of India. He however, retained his lien on the post of Lecturer in Hindi in the Govt. College, State Govt. of Rajasthan till 31.12.1975. He was permanently absorbed in the Central Government with effect from 1.1.76 and his lien in the State Government of Rajasthan was terminated with effect from that date. Under the impugned order, he was compulsorily retired on 8.10.86 under F.R.56(j). That Rule reads as follows:-

" F.R.56(j) Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:

(i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity, or in a Group 'C' post or service in a substantive capacity, but officiating in a Group 'A' or Group 'B' post or service and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years."

The Applicant contends that since he had entered Central Government service after he had passed the age of 35 years, he cannot be compulsorily retired before he attained the age of 55 years.

2. Before we deal with the principal contentions, we may dispose off the preliminary objections raised by the learned counsel for the Respondents, Mrs. Raj Kumari Chopra that as the applicant had not exhausted all the remedies available to him under the service rules and had withdrawn his G.P.F. and other retirement benefits,

therefore this application ought not to have been entertained at all by the Tribunal. Every Government servant is entitled to retirement benefits in accordance with law. Merely by withdrawing the amounts due to him, he is not estopped from questioning the order if it is otherwise illegal.

3. The order of compulsory retirement was made by the President under the Service Rules applicable to the Applicant. There is no specific service rule which vests in a Government servant a right of appeal or revision before any other authority. Since the order was made by the President; at the most as envisaged by the instructions regarding pre-mature retirement issued by the Government of India, Ministry of Home Affairs, Office Memorandum No. 25013/14/77-Estt.(A) dated 5th January 1978, the Govt. servant could make a representation against that order following the procedure for such revision as laid down. This is however, not a statutory rule. Section 20 of the Administrative Tribunals Act on the basis of which the objection that the Applicant not having availed of the remedy provided under the above-said Memorandum this application cannot be entertained by the Tribunal, reads thus:-

"20(1) 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 service rules as to redressal of grievances".

The expression "unless it is satisfied that the applicant had availed of all the remedies available to him under the service rules as to redressal of grievances" refers to the remedies available to him under the service rules. That expression has been defined under Section 3(r) of the

Administrative Tribunals Act as under:-

" service rules as to redressal of grievances", in relation to any matter, means the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal, otherwise than under this Act, of any grievances in relation to such matters".

This may ~~be~~ take in the procedure laid down under the said Office Memorandum also. That Office Memorandum speaks of the representation being considered by the Ministry/Department/Office and not by the President. Obviously when the President, who is the head of the State, has himself made the order, only a memorial can be submitted to him and not any representation under the said Office Memorandum. Sub section (3) of Section 20 of the Administrative Tribunals Act, 1985 lays down that " for the purposes of sub-sections(1) & (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial". Failure to file any such memorial or representation cannot be construed as failure to exhaust all the remedies available under the Service Rules and does not operate as a bar to an application under Section 19; nor does it take away the jurisdiction or the authority of the Tribunal to entertain the Application. That apart, the prohibition contained in sub section (1) of Section 20 against the Tribunal entertaining an application if the applicant had ^{not} exhausted all the remedies available to him, itself states that the Tribunal shall not "ordinarily" admit an application. There is no total bar against the Tribunal admitting the application in the circumstances of a particular case. Where the President has ordered compulsory retirement and there is no statutory rule

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providing for an appeal or revision against that order to any other authority, in our view the Applicant was entitled and certainly justified in moving the Tribunal. Anything contained in sub Section(1) of Section 20 could not stand in the way of the Tribunal entertaining the Application or obliging the Tribunal to reject it on the ground that the Applicant had not exhausted all the remedies provided to him under the relevant service rules. Even otherwise, in a case of compulsory retirement if the representation had to be made to the same authority which passed the order, in our view, that is a fit case for the Tribunal entertaining the Application under Section 19 without insisting upon the Applicant to exhaust all the remedies available under the Service Rules. The Tribunal would be justified in entertaining the Application under Section 19 of the Administrative Tribunals Act and in not driving the Applicant to make a representation to the same authority which passed the order. Therefore, these preliminary objections are overruled.

4. It is clear from F.R. 56(j) that if a person had entered Government service before attaining the age of 35 years only then he may be retired on attaining the age of 50 years in exercise of the powers vested in Rule 56(j)(i); and if he entered later/after he has attained the age of 55 years. In other words, if the Applicant had entered Government service after he has completed 35 years of age, he cannot be retired until he attains the age of 55 years. As stated by the applicant and also established by the entries in the service record, he was born on 1.1.34 and was well above 35 years of age in 1973 but was less than 35 years of age when he entered the service of Rajasthan State Government in 1963 and further he had not attained the age of 55 years by 8.10.1986; when the impugned order was passed he was only 52 years of age. If the

expression "entered Government service" occurring in F.R.56(j)(i) could mean both State Government Service and the Central Government Service, then the Applicant's contention must fail. Fundamental Rules of which Rule 56 is a part, applies to the Central Government service and as such wherever the expression "Government Service" occurs in the said Rules, that expression must necessarily refer to Central Government service. That is made further clear by the note appended to Rule 56(C) which specifies as under:-

" Note- For the purposes of this clause, the expression "Government service" includes service rendered in a former Provincial Govt."

If it was the intention of the Rule Making Authority that the date of entry into the State Government service also should be taken into account for the application of Rule 56(j)(i) a similar note would have been added to F.R. 56(j) as well. Absence of any such note also indicates that the Rule Making Authority intended only taking into account the age of the Government servant when he entered Central Government service for the purpose of F.R.56(j)(i) and not his age when he entered the State Government service.

5. Learned counsel for the Respondents, however, contended that the Applicant had got the benefit of the service rendered by him under the State Government and, therefore, the fact that he had not attained the age of 35 years when he joined Central Government service cannot be upheld. This contention cannot be upheld for the Central Government can compulsorily retire a Government servant in accordance with F.R. 56(j)(i). To our mind this ^{also} is not valid consideration for the exercise of the powers under F.R.56(j). Moreover, the Applicant got the benefit of his service under the State Government because of his deputation and his lien being continued with the State Government until he was permanently "absorbed". Such absorption cannot

enlarge the scope of the expression "Government service" occurring in F.R.56(j)(i). In the absence of any explanation to F.R.56(j)(i), the expression "Government service" occurring in that Rule could only mean the Government service from which one is sought to be retired compulsorily under F.R.56(j)(i). Of course, ~~in~~ this does not mean that the Govt.servant who had entered Central Government service should have been in the same service from which he is being retired. The expression "Government service" means and includes any Government service under the Central Government ^{not} and/necessarily the service ^{which} ~~one~~ had joined initially. If a person had joined any service under Central Government before he attained the age of 35 years, even though he may have been transferred or absorbed in any other service under the Central Government,

F.R.56(j)(i) would apply. But if he had not joined any service under the Central Government before he attained the age of 35 years this power cannot be exercised. This view of ours receives support from the judgement of the learned Single Judge of the Delhi High Court in T.C.Sanghi Vs.Union of India & others (CW 508/74.-dated 24.11.1981). Considering a case under F.R. 56(j) Justice Goswamy had held that " Fundamental Rule 56(j)(i) when it talks of entering the Government service it means the Government service from which he is being retired".

6. A similar view was taken by the Division Bench of the Delhi High Court in S.C.Dikshit vs.Union of India and others (CWP 943/86) judgement dated 11.12.86. Dealing with a contention similar to the one raised in this application the learned judges held:-

" The case of the petitioner is thus clearly of a re-employed pensioner he having snapped his earlier relations


with the State of U.P. on the acceptance of the resignation of the service. As this employment with the D.D.A with effect from January 1, 1981 as a pensioner of the State of U.P. and his entry into the service with D.D.A. was after attaining the age of 35 years, there was no jurisdiction to retire the petitioner under F.R.56(j)(i).....

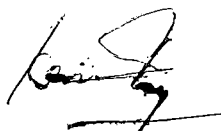
Power is conferred under F.R.56(j)(i) only if the officer entered the service of D.D.A before attaining the age of 35 years."

This view of the Bench was upheld by the Supreme Court in SLP(Civil) 644/87- Union of India Vs. Shri S.C. Dixit by refusing special leave.

7. We are, therefore, of the opinion that the order of compulsory retirement made against the applicant, he having been born on 1.1.34 and being 35 years of age when he entered the Central Government service in 1973 he could not be compulsorily retired from service under F.R.56(j)(i) before he attained the age of 55 years. The impugned order is, therefore, quashed.

8. In the result, the application is admitted and the impugned order is quashed. The applicant shall be reinstated in service within two weeks of the receipt of this order. He will be entitled to arrears of pay and allowances and all benefits of continued service. In the circumstances, there shall be no order as to costs.


(B. C. Mathur)
Vice-Chairman
2.4.87


(K. Madhava Reddy)
Chairman
2.4.87