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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No. 898/1986.

Date of decision: February 14, 1990.

Shri Sewa Ram Jain Applicant.
Vs.
Union of India and others Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicant ... Shri Sant Lal, counsel.
For the respondents ... Shri N.S. Mehta, Senior Standing Counsel.

(Judgment of the Bench delivered by Hon'ble Mr. Justice Amitav Banerji, Chairman).

The applicant, Shri Sewa Ram Jain, has filed this Application aggrieved against the order dated 11.3.1986 (Annexure-I to the O.A.) prematurely retiring him under F.R. 56 (j)(i). He has prayed for setting aside the impugned order of pre-mature retirement, direction to the respondents to reinstate the applicant in service and to declare the entire period from 17.3.1986 till the date of actual reinstatement as spent on duty for all purposes with full pay and allowances and other consequential benefits. He has also prayed for costs.

We have heard learned counsel for the parties and perused the record.

The applicant joined the Postal Services as Postal Assistant on 2.1.1953 and had served till 1986 for 33 years. He was promoted to the rank of Postmaster Service Group 'B' in 1980 and was posted as Deputy Postmaster

(Group 'B') in New Delhi Head Office. He was transferred out of Delhi Postal Circle in 1982. He had challenged the transfer on the ground of mala fides in a Civil Writ Petition No.2474/82 in Delhi High Court. The operation of the transfer order was stayed by the Delhi High Court.

The C.B.I. filed a Criminal case in court on 20.12.1980 under Section 120 B read with Section 420/471 I.P.C.

The Trial Court convicted the applicant by an order dated 4.3.1983. But he was acquitted by the Additional Distt. & Sessions Judge, New Delhi vide his judgment dated 23.2.1984.

The applicant had been put under suspension from 4.3.1983

i.e. the date of conviction by the Trial Court. While

he was under suspension, the Postmaster General Delhi

Circle initiated disciplinary proceedings under Rule 16

of CCS(CCA) Rules,1965. The applicant has submitted his

representation. The Postmaster General Delhi Circle

vide Memo dated 30.8.1985 (Annexure P-9 to the O.A.)

awarded the penalty of censure for the alleged lapses.

Thereafter the suspension order was revoked on 13.9.1984

and the applicant rejoined his duties as Deputy Postmaster

(Gazetted) in New Delhi Head Post Office on 14.9.1984 F.N.

The applicant had filed a suit in the Civil Court for

mandatory injunction for directing the defendants to

treat the period of suspension as spent on duty for all

purposes and release the salary for the period from 4.3.83

to 13.9.1984. In their written statement dated 11.10.1985,

the defendants had indicated that regular departmental

action under Rule 14 of CCS(CCA) Rules,1965 was contemplated

and the period of suspension would be decided on finalisation of the disciplinary proceedings.

Thereafter an order dated 11.3.1986 was issued (Annexure-I to the OA) whereby the applicant has been pre-maturely retired from service with immediate effect.

Instead of giving three months notice as prescribed in F.R. 56(j), the Secretary (Posts) chose to pay the applicant a sum equivalent to the amount of his pay plus allowances for a period of 3 months. The applicant filed a representation to the Secretary, Government of India (Department of Posts) on 1.4.1986 against the aforesaid order of pre-mature retirement. The representation was rejected and the applicant was intimated to this effect by the Director (Staff) vide letter dated 8.9.1986.

The stand taken by the respondents was that the performance of the applicant during his service career was reflected in his Annual Confidential Reports (ACRs). He had been convicted and sentenced to 4 months R.I. and a fine of Rs.1000/- for the offence punishable under Section 420 IPC and was sentenced to 6 months R.I. and a fine of Rs.2000/- for the offence punishable under Section 471 IPC by the Metropolitan Magistrate, New Delhi on 4.3.1983. But it was admitted that on appeal, he had been acquitted by the appellate court giving the applicant benefit of doubt. Departmental Promotion Committee did not permit the applicant to cross the efficiency bar even after his acquittal from the court in the criminal case and the disciplinary action against the officer was taken in another case which resulted in an award of 'Censure' entry.

The applicant did not appeal against the above order.

In regard to the pre-mature retirement, the stand of the respondents was that the order under F.R. 56(j) was passed after considering the service record of the applicant and not on one particular incident of his ineffectiveness and inefficiency. Compulsory retirement under FR 56(j) is not a penalty and no stigma is attached to such a Government servant. It is not necessary for the Government to communicate the reasons for the rejection of the representation against compulsory retirement. The Review Committee was of the view that the applicant was not a fit person to continue in Government service any more.

There was a prayer by the applicant to direct the respondents to make available the relevant record leading to pre-mature retirement of the applicant and the Minutes of the Representation Committee. An objection was taken by the respondents claiming privilege in respect of the records leading to the pre-mature retirement of the applicant and the Minutes of the Review and Representation Committees. That matter came up before us on 14.2.1990. The relevant record has, however, been placed before us for our perusal and we have examined the same.

We think, it will be necessary to refer to the order dated 11.3.1986, impugned in this Application which reads as under:

" No.25/35/85-SPG
Bharat Sarkar, Sanchar Mantralaya
(Department of Posts)
Dated, New Delhi: 110001, the 11th March, 86.

ORDER

Whereas the Secretary (Posts) is of the opinion

that it is in the public interest to do so.

2. Now, therefore, in exercise of the powers conferred by clause (j)(i) of Rule 56 of the Fundamental Rules, the Secretary (Posts) hereby retires Shri Sewa Ram Jain, with immediate effect, he having already attained the age of 50 years. Shri Sewaram Jain shall be paid a sum equivalent to the amount of his pay plus allowances for a period of 3 months calculated at the same rate at which he was drawing them immediately before his retirement.

Sd/- (B.N.SOM)
DIRECTOR (STAFF)

Shri Sewa Ram Jain,
Deputy Postmaster, (Gazetted)
New Delhi HPO. "

This shows that the order was passed by the Director (Staff) on behalf of the Secretary (Posts). Power under F.R. 56 (j)(i) was exercised to retire the applicant with immediate effect. It was stated that he had attained the age of 50 years. As a matter of fact, he was nearing 55 years of age when the above order was passed. He was in regular service of the Central Government and was holding Group 'B' (Gazetted) post. He had entered Government service before attaining the age of 35 years and he had also attained the age of 50 years. The order could be passed in his case for pre-mature retirement provided the Reviewing Committee came to the conclusion that he was not fit to be retained in service. But that conclusion must necessarily be based on material record. In other words, there must be some evidence in the record which justifies his compulsory retirement. The order under F.R. 56(j) can only be passed if the appropriate authority is of the opinion that it is in the public interest to retire the

Government servant after he had attained the age of 50 years. It is incumbent on the Review Committee to come to conclusion that the public servant is not fit to be retained in service. However, this conclusion can only be arrived at provided there is some material on the record which justifies such a view. In other words, there must be adverse noting in the A.C.Rs or some other material showing the inefficiency, ineffectiveness or something showing that he was ^adead wood in the Department or there was some adverse report ^{like} lacking integrity or any other similar report. After all the Review Committee's report has to be based on some cogent material on the record which led to the conclusion that he had not to be retained in the Department.

It is true that the applicant had been convicted by the Criminal Court but it is also true that he was acquitted of the charge by the Appellate Court. Even if he was given the benefit of doubt, that would not leave a stigma on the applicant. An acquittal by the Appellate Court wipes out the entire proceeding and that should not leave any ill effect on his record of service.

It is true that censure entry was awarded to the applicant under Rule 16 of the CCS(CCA) Rules, 1965 by the Postmaster General, Delhi Circle vide his order dated 30.8.1985. The stand taken in this connection is to be noticed in paragraph 'M' of the counter where it was stated :

"It is denied that the punishment of censure was either for a ground for compulsory retirement or was at all utilised for that purpose. The proceeding of Departmental enquiry are not relevant in

this case and Govt. instructions on the subject have not been violated."

Consequently, we have looked into the A.C.Rs of the applicant from the year 1970-71 to the year ending 30.3.1984. We have not seen any adverse entry in the assessment of 'Integrity' nor have we found any adverse entry in respect of initiative, tact and judgment, power of taking responsibility, capacity for handling difficult cases, capacity for control etc. In regard to the column for 'General Performance' of the applicant, the entries have been generally good throughout. These range from satisfactory, very useful, very prompt, very well, quite good, very good, excellent and outstanding. There was only one entry of ordinary and one of fairly average which incidentally was not approved by the Reviewing Officer, who classified him as 'outstanding'. While taking an overall assessment of the situation, it is imperative that the good entries be also taken into account. The impression that we got from looking into the record was that the applicant had a good record of service and had not received any adverse entries. Of course, during the period of suspension, he could not get any entry. As indicated earlier, the proceedings in the criminal Court having ended in acquittal, the conviction by the trial court or the benefit of doubt given by the appellate court could not be taken into consideration at all. Similarly the censure penalty should also not go into the overall assessment, for their own showing, it was not taken into consideration.

We do not find any entry in the A.C.Rs to show that the applicant was inefficient or ineffective nor we do find any material on record which would indicate that his retention in service was not justified and that his premature retirement was in public interest. It is, however, true that he had filed a writ petition in the Delhi High Court, a suit in the Civil Court for certain matters but surely that cannot be a ground for judging his non-suitability for retention in Government service.

We, therefore, come to the conclusion that there was no justification for pre-mature retirement of the applicant from service. We feel that the impugned order dated 11.3.1986 pre-maturely retiring the applicant was bad in law and must be set aside. The applicant having reached the age of superannuation on 30.9.1989 is not entitled to the relief of reinstatement but he is surely entitled for a direction that the period from 17.3.1986 (when he was served with the impugned order) till the date of his superannuation viz., 30.9.1989 will be treated to be a period spent on duty and he would be entitled to the full pay and allowances for the said period. He will also be entitled to his retiral benefits with effect from 1.10.1989. In the result, therefore, this Application is allowed. The impugned order of pre-mature retirement dated 11.3.1986 is quashed. We further direct that the applicant would be deemed to be in service from the date the order of pre-mature retirement was served on him till the date of his superannuation and this period will be treated as spent on

duty. He will be entitled to full pay and allowances for the said period as well as for the retirement benefits from 1.10.1989. There will be no order as to costs.

Respondents are directed to comply with the above order within a period of four months from the date a copy of the same ^{is} served on them.

B.C. Mathur
(B.C. MATHUR)
VICE-CHAIRMAN (A)
14.2.1990.

Am. Banerji
(AMITAV BANERJI)
CHAIRMAN
14.2.1990.

SKS