

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(9)

O.A. No. 1030
T.A. No.

198 6

DATE OF DECISION 21.10.1987

Shri Piare Lal Tiwari Petitioner

Ms. Nitya Ramakrishnan Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

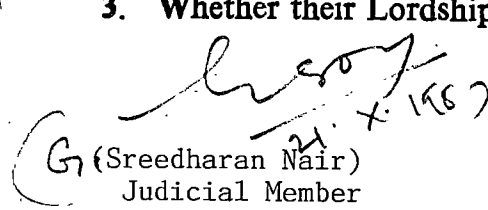
Smt. Raj Kumari Chopra Advocate for the Respondent(s)

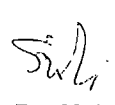
CORAM :

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

The Hon'ble Mr. Sreedharan Nair, Judicial Member.

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


(Sreedharan Nair)
Judicial Member


(S.P. Mukerji)
Administrative Member

(10)

Central Administrative Tribunal
Principal Bench, Delhi

Regn. No.OA-1030/86

Date: 21.10.1987

Shri Piare Lal Tiwari

.... Applicant

Union of India & Others

Versus
.... Respondents

For the Applicant

.... Ms. Nitya Ramakrishnan
Advocate.

For the Respondents

.... Smt. Raj Kumari Chopra,
Advocate.

CORAM; Hon'ble Shri S.P. Mukerji, Administrative Member.
Hon'ble Shri Sreedharan Nair, Judicial Member.

(Judgement of the Bench delivered by Shri S.P. Mukerji)

The applicant, who was working as Sorting Assistant, has moved this Tribunal under Section 19 of the Administrative Tribunals Act for setting aside the impugned order of compulsory retirement in public interest under F.R.56(j), dated 1st September, 1986 passed by the Senior Superintendent of Post Offices. It is stated by him that he had been superseded on 15.3.1985 and on 18.8.1984 he was charge-sheeted culminating on 19.9.1984 in punishment of withholding of increments and penalty of recovery. This punishment was set aside by the Delhi High Court because of procedural lapses and by the order dated 10th December, 1985, he was awarded punishment of recovery and withholding of promotion in the time-scale of pay for two years. On an application for revision, the competent authority, i.e., Member (Personnel) Postal Services Board) on 20th January, 1987, set aside the order of punishment as not being a speaking order and the case was remitted back to the disciplinary authority "for issuing a well-reasoned self-contained speaking order" discussing fully as to how each imputation against the applicant was established. In the meantime, the impugned order of compulsory retirement was passed on 1st September, 1986. The main grounds taken by the applicant are that firstly, that he was compulsorily retired by the Senior Superintendent while having been promoted

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to ^{the} ~~Lower~~ ^{Selection} ~~Grade~~ (even though the promotion order was not implemented) the competent authority was the Director of Postal Services. It has also been argued that some of the adverse remarks on the basis of which he had been retired, had not been communicated to him and that the impugned order suffers from mala fides as it was passed when his revision application against the order of penalty had not been disposed of.

2. The contention of the respondents is that on the recommendations of the High Powered Committee constituted to review the cases of persons who had attained the age of 55 years, the applicant was retired in the public interest under F.R. 56(j) and Rule 48 of CCS (Pension) Rules. They have averred that the applicant had a bad record, that he had joined the strike in Railway Service Wing in 1968 as a Sorting Assistant and was thus superseded. They have denied the allegation of mala fides or discrimination and stated that he has not exhausted the departmental remedies. In the rejoinder, the applicant has denied the last averment and stated that he had represented against the impugned order. He has also argued that he was selected by the D.P.C. for the ^{Lower} ~~Selection~~ ^{Grade} and orders had been issued for his promotion but the mere fact that it was not implemented, should not mean that Senior Supdt., who was not the appointing authority for staff in the ~~Lower~~ ^{Lower} Selection Grade (LSG) should still be competent to pass the impugned order.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We are not impressed by the argument of the learned counsel for the applicant that the applicant's status could be considered to have been elevated to that of ^{an} LSG employee on the basis of the order of promotion even though, admittedly, the said order was not implemented, so far as the applicant is concerned. The learned counsel admitted that the applicant did not receive higher pay-scale subsequent to the order

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of promotion. She also could not produce any orders or documents to show that a Sorting Assistant promoted to LSG as a Supervisor, can be compulsorily retired only by a Director. The status of the applicant on the date of the impugned order was that of a Sorting Assistant, the unimplemented order of promotion notwithstanding and, therefore, we see nothing vitiating in the competence of the Senior Supdt. in passing the impugned order.

4. The other principal argument of the learned counsel for the applicant is that the order of compulsory retirement is founded on the imposition of the penalty of recovery and withholding of increments which has been set aside in revision and, therefore, the impugned order of compulsory retirement warrants a review. She has also argued that some adverse remarks might have been recorded in the applicant's C.R. which had not been communicated to him and in accordance with the rulings of the Supreme Court, consideration of such adverse remarks for the purpose of compulsory retirement is bad in law and vitiates the impugned order. The learned counsel for the respondents was good enough to produce the C.R. dossier of the applicant. We find that for the period "1.4.1985 to March, 1986," the following adverse remarks had been recorded:-

- | | | |
|-----|------------------------------|--|
| (1) | Col. 7(a)(ii) Conduct - | Satisfactory except amenability to discipline. |
| (2) | Col.7(a)(v) Devotion to duty | Less than average |
| (3) | Col.9(a) Genl.performance | i) further promotion in the time scale withheld for two years.
ii) Recovery of Rs.398.30 in six instalments vide SRM(54) New Delhi 54 No.110001 Memo. No. B-26/R-16.P.L. Tiwari/85-86 dt. 10.12.85 for misappropriation of the bank recoveries from the officials in favour of Postal RMS Emp. Coop. Bank Ltd. Ambala while working as Cashier in SRO New Delhi RMS from 23.11.82 to 25.6.83. |

- (4) Col.12 General remarks
- 1) Censure vide SSRM New Delhi Stg. Dn. New Delhi 110001 Memo No.B-36/3-40/85 dt. 4.2.86 and period dt. 19.10.85 treated as dies non against the orders of SRM (Stg.) No.Stg. ND 110001 Memo No.B-26/R-16 P.L.Tiwari/85-86 dt. 21.11.85, of stoppage of increments for two years for leaving office early without permission and wrong totalling in the abstract in the Ins/IB col.

2) As mentioned in col.9(a)

- (5) Col.13 Assessment of integrity: Dishonest as mentioned in col.9(a)".

It is admitted by the respondents that out of the aforesaid 5 adverse remarks, only the first four were communicated to the applicant vide two memos. both dated 18.3.1986. The most damaging report about dishonesty was ^{admittedly} not communicated to the applicant. In the instructions on premature retirement issued by the Government of India in Office Memorandum No.25013/14-Estt.(A) of 5th January, 1978 (Appendix 10 to Swamy's Pension compilation on Central Civil Services Pension Rules) detailed criteria for such retirement have been given. One of the criteria laid down is that the "Government employees whose integrity is doubtful will be retired". This provision has an element of being mandatory while the other criteria laid down are directive. Against this backdrop, we feel that non-communication of the adverse remarks about integrity is fatal so far as the validity of the impugned order is concerned. Our reasons are given below. In Brij Mohan Singh Chopra Vs. State of Punjab, A.T.R.1987(1) SC 513, the Supreme Court observed as follows:-

" Decisions in Gurdial Singh Fiji v. State of Punjab and others 1973(3) S.C.R. 518 and Amar Kant Choudhry v. State of Bihar, 1984 (2) S.C.R.297 lay down the principle that unless an adverse report is communicated and representations, if any, made by the employee is considered, it cannot be acted upon to deny promotion. We are of the opinion that the same consideration must apply to a case where the adverse entries are taken into account in retiring an employee prematurely from service. It would be unjust and unfair and contrary to principles of natural justice to retire prematurely a Government employee on the basis of adverse entries which are either not communicated to him or if communicated representations made against those entries are not considered and disposed of."

[Handwritten signature]

Considering that the uncommunicated adverse entry in the instant case before us relates to the crucial question of integrity which is a determining factor in compulsory retirement, we feel that the applicant has suffered grievously at the hands of the respondents by the violation of rule of natural justice by the non-communication of the aforesaid adverse entry.

5. The learned counsel for the respondents argued that since the impugned order was passed on the basis of the overall assessment of the C.R. of various years, it cannot be stated that the aforesaid uncommunicated adverse entry played any effective role in the issue of the impugned order. This argument cannot be accepted in view of the aforesaid ruling of the Supreme Court. The ruling does not warrant a research into the role played by an adverse entry in any particular year but presuming that all relevant entries have been considered by the competent authority, non-communication of ^{any} adverse entry during the relevant period is illegal. One cannot say that since entries of five years prior to the date of compulsory retirement have been taken into account, non-communication of the adverse entry of one year should not be material as it is possible that that year's adverse entry might not have played any role. The same concept applies in non-communication of one of a number of adverse entries in one particular year.

6. The learned counsel for the respondents further argued that since adverse entry about dishonesty is based on the adverse entry about the penalty imposed on the applicant indicated against col.9 of the C.R. form, and since the latter entry was communicated, non-communication of the adverse entry about integrity is not material. This argument also is not convincing as the adverse entry about dishonesty made against col.13, though founded on the penalty items shown against col.9, is not a reproduction of the communicated ^{only one of the many conditions which could be} adverse entry but is ^{derived} therefrom. For instance, if the

uncommunicated entry about dishonesty had not been made, the High Powered Committee which recommended compulsory retirement of the applicant, need not have concluded from the penalty indicated against col.9 that the applicant was dishonest. The penalty of withholding of promotion or recovery of Rs.398.30 indicated in col.9, could ^{as will} have been presumed to be due to bona fide negligence also without any doubt about integrity. By making a positive entry about dishonesty in the C.R., the respondents have given a conclusive statement of dishonesty against the applicant which cannot but play a ^{and independent} decisive role in the minds of the members of the High Powered Committee in making a recommendation about the compulsory retirement of the applicant.

7. Even the very foundation of the uncommunicated entry of dishonesty against the applicant did not survive after the Member, P & T Board, passed the order dated 20.1.1987 setting aside the order of punishment. It is not denied by the respondents that the applicant filed the revision petition on 13.8.1986 against the order of penalty through proper channel after he was directed by the Tribunal to exhaust the departmental remedies. The respondents, therefore, were well aware ^{at this} on ^{1.9.1986} ~~13.9.1986~~ when the applicant's case was ^{cluded.} ~~considered~~ for review. Even when the High Powered Committee met on ^{17.6.1986} ~~13.6.1986~~, the applicant had already approached the Tribunal for setting aside the order of penalty which, as the facts above show, was done not by the Tribunal but by the revision authority in the department itself. As such, the uncommunicated adverse remarks about dishonesty do not only suffer from the violation of the principle of natural justice but are based on an order of punishment which itself suffered from fatal irregularities ^{and was set aside.}

8. From the records also we cannot help noticing that even these ^{these} adverse entries which were communicated for the year 1985-86 were so communicated by an O.M. dated 18.3.1986 whereas the reporting

period, i.e., 1985-86 ended on 31.3.1986. This means that all the entries of this reporting year which are undated, must have been recorded before 18.3.1986, i.e., before the reporting period ended on 31.3.1986. This also casts some ^{additional} doubt about the general propriety of the recording and communicating of the adverse remarks ^{for} during the period 1985-86.

9. The argument of the learned counsel for the respondents that the decision to retire the applicant ^{compulsorily} ~~satisfactorily~~ in public interest was taken after an overall assessment of the C.R. and that the entries in the C.R. being not very good, the applicant would have merited compulsory retirement even otherwise, cannot be accepted in view of the ruling of the Supreme Court mentioned above. Further, it is unthinkable that any reasonable mind would have overlooked a positive statement of dishonesty recorded against the applicant in the C.R. and still would have recommended his suitability for being retained in service. The adverse entry about dishonesty is nothing less than a death knell on the applicant's career and character and so long as it is not communicated and his representation disposed of, its very existence in the C.R. dossier is a travesty of the concept of natural justice in the matter of compulsory retirement of the applicant howsoever incompetent or inefficient he may otherwise be. ^h ~~The healing touch of natural justice encompasses the knave and the angel with equal benediction.~~ ^h

10. In the facts and circumstances, we have no hesitation in allowing the application and setting aside the impugned order of compulsory retirement dated 1.9.1986, and we do so accordingly, with the direction that the applicant should be reinstated to service with effect from the date of compulsory retirement with all consequential ~~benefits~~ as if the impugned order had not been passed. However, the respondents will be at liberty ^{if so advised} to review the case of

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the applicant for compulsory retirement by ignoring the entries for the year 1985-86 and without placing the same on the C.R. dossier and take appropriate decision about the further continuance of the applicant in Government service with a prospective effect. There will be no order as to costs.

h.s.
21.7.87
(Sreedharan Nair)
Judicial Member

S.P. Mukerji
21.7.87
(S.P. Mukerji)
Administrative Member