

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1122/ 1986.
T.A. No.

DATE OF DECISION 18th January, 1988.

I. S. Ahluwalia Petitioner

Shri D. C. Vohra Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri M. L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Kaushal Kumar, Member (A).

The Hon'ble Mr. Ch. Ramakrishna Rao, Member (J).

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 other Benches? No

Ch. Ramakrishna Rao
(CH. RAMAKRISHNA RAO)
MEMBER (J)
18.1.1988.

Kaushal Kumar
(KAUSHAL KUMAR)
MEMBER (A)
18.1.1988.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 1122/86. DATE OF DECISION: 18th January, 1988.

I. S. Ahluwalia Applicant.

v/s.

Union of India Respondent.

CORAM: Hon'ble Mr. Kaushal Kumar, Member (A).
Hon'ble Mr. Ch. Ramakrishna Rao, Member (J).

For the applicant Shri D.C. Vohra, Counsel.

For the respondents Shri M.L. Verma, Counsel.

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was an Assistant in the Ministry of External Affairs, is aggrieved by the order dated 4th August, 1986 giving him notice under F.R. 56 (j)(i) for premature retirement with effect from the forenoon of 4th November, 1986 (Annexure - J to the Application) and the order dated 3rd November, 1986 rejecting his representation dated 18th August, 1986 in regard to notice for premature retirement (Annexure - N to the Application). In the reliefs sought in the application, it has been prayed that the impugned order dated 3rd November, 1986 compulsorily retiring the applicant under FR 56(j)(i)(ii) be quashed and that the applicant be allowed certain other benefits regarding Selection Grade for Assistants, crossing of the efficiency bar withheld since 1984 etc.

2. The main ground on which the impugned order is challenged is that it is a non-speaking order and that there was no public interest involved in passing the said order. It is also contended that the said order was passed by way of punishment and removal from service, thus attracting the procedure of inquiry envisaged under Article 311(2)

M. L. Verma

of the Constitution. The other grounds of attack on the said order are that it is not based on any facts and evidence but is the result of doubts, surmises and hearsay, that the said order is discriminatory and hit by Articles 14 and 16 of the Constitution and that it is against the principles of natural justice inasmuch as no opportunity had been afforded to the applicant to show cause or otherwise represent his case as to why the impugned order should not have been passed.

3. The learned counsel for the applicant, Shri D.C. Vohra, argued that the entire service record of the applicant could not be taken into account for passing the impugned order. At the most the service record of the preceding 10 years i.e., from 1977 to 1986 should have been considered and that this record did not warrant the passing of the impugned order for premature retirement. He also stated that the adverse remarks recorded in the ACR of the applicant for the year 1966 had been expunged and he had been promoted in 1969 to the post of Assistant. He argued that the warning dated 29th August, 1983 issued to the applicant (Annexure - A to the Application), the note dated August 30, 1983 recorded by the Indian Ambassador in Sana'a and the adverse entries recorded in the ACR for the year 1983 could not by themselves constitute sufficient material to justify the issuance of the impugned order prematurely retiring the applicant from service. The learned counsel for the applicant also pointed out that in this case 'Review' was not carried out when the applicant had attained the age of 55 years. It was carried out when the applicant had attained the age of 56 years and 6 months roughly and only about $1\frac{1}{2}$ years of service were left before his retirement from service on superannuation. The review at the fag-end of his service career when only $1\frac{1}{2}$ years of service were left and the order based on inadequate material not warranted by the long service record, without giving a show cause notice

M. Naseem

and in total violation of the principles of natural justice was bad in law, liable to be struck down.

4. The case of the respondents is that right from the beginning of his career, the applicant's conduct and performance had been adversely commented upon. In the year 1962 he was orally warned on a few occasions to improve his work. In 1966 while serving in Indian Aid Mission, Kathmandu, adverse remarks were conveyed to him regarding his rudeness and tactless handling. His representation against adverse remarks in 1966 was considered, but the remarks were not expunged from his ACR. Again in 1971 while he was serving in the Commission of India, Mombassa, his integrity was called in question and a departmental inquiry was instituted against him for accepting inducements from members of the public. In the year 1976, he was warned for shortage of consular stamps and for under-stamping of affidavits/visas which proved his negligent attitude towards his work. While serving in London in 1975, it was noted that he had not been able to improve either his output or punctuality despite repeated exhortations. He was also warned for allowing his dependent daughter to take up gainful employment without Ministry's permission. In 1976 also he was warned for unauthorised absence from duty. It is also stated in the counter-affidavit that "His performance and conduct during the year 1983 further attracted adverse comments from the Ambassador relating to his integrity, reliability and attitude towards work which only reinforces the view held by the earlier reporting officers." The applicant had represented against the adverse remarks pertaining to the year 1983, but his representation was rejected. He was also given a written warning on 10th December, 1985 while he was posted in the Embassy of India, Prague, for bad handling of accounts work in the commercial section, unauthorised absence from duty and for committing security

Sub. Murali

lapse. Admittedly the applicant did not make any representation against the warning which was communicated to him on 10th December, 1985 by the First Secretary (HOC), Embassy of India, Prague.

5. Before we proceed to examine the material which formed the basis for passing the impugned order, it is necessary to go into the merits of certain legal propositions advanced by the learned counsel for the applicant. His main contentions are that the order of premature retirement had been issued without following the principles of natural justice inasmuch as no inquiry was held or any show cause notice issued to the applicant and that the provisions of Article 311(2) have been violated. In this connection, we would like to refer to the observations of the Supreme Court in *Shyam Lal v. State of U.P.* (1955 (1) SCR 26 : AIR 1954 SC 369) where it was held that compulsory retirement does not amount to removal or termination; nor does it cast any stigma. The Constitution Bench further observed:

"There is no such element of charge or imputation in the case of compulsory retirement. The two requirements for compulsory retirement are that the officer has completed twenty-five years' service and that it is in the public interest to dispense with his further services ... a compulsory retirement does not amount to dismissal or removal and, therefore, does not attract the provisions of Article 311 of the Constitution or of Rule 55"

6. Again in *Union of India v. Col. J.N. Sinha* (AIR 1971 SC 40: 1970 (2) SCC 458, the Supreme Court observed as follows: -

"The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the condition mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is

H. Thakur

an arbitrary decision Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution."

7. In Baldev Raj Chadha v. Union of India (1981 (1) SLJ 188 : (1980) (4) SCC 321 : 1981 SCC (L&S), the Supreme Court observed:

" The whole purpose of the rule is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. After all, administration to be efficient, must not be manned by drones, do-nothings, incompetents and unworthies. They may not be delinquent who must be punished but may be a burden on the administration if by insensitive, insouciant, unintelligent or dubious conduct impede the flow or promote stagnation, in a country where speed, sensitivity, probity, and non-irritative public relations and enthusiastic creativity are urgently needed but paperlogged processes and callous cadres are the besetting sin of the administration."

8. In Union of India v. M.E. Reddy (SLJ 1979 S.C. 738), the Supreme Court observed as follows: -

"9. It is now well settled by a long catena of authorities of this Court that Compulsory retirement after the employee has put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Art. 311 (2) of the Constitution. In fact, after an employee has served for 25 to 30 years and is retired on full pensionary benefits, it cannot be said that he suffers any real prejudice. The object of the Rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In

A. M. S.

such a case compulsory retirement of an officer who fulfils the conditions of Rule 16 (3) is undoubtedly in public interest and is not passed by way of punishment. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsory retired in public interest, since they have almost reached the fag end of their career and their retirement would not cast any aspersion nor does it entail any civil consequences. Of course, it may be said that if such officers were allowed to continue they would have drawn their salary until the usual date of retirement. But this is not an absolute right which can be claimed by an officer who has put in 30 years of service or has attained the age of 50 years. Thus, the general impression which is carried by most of the employees that compulsory retirement under the conditions involves some sort of stigma must be completely removed because rule 16(3) does nothing of the sort.

10. Apart from the aforesaid considerations we would like to illustrate the jurisprudential philosophy of rule 16(3) and other similarly worded provisions like Rule 56(j) and other rules relating to the Government servants. It cannot be doubted that rule 16(3) as it stands is but one of the facts doctrine of pleasure incorporated in Art. 310 of the Constitution and is controlled only by those contingencies which are expressly mentioned in Article 311. If the order of retirement under rule 16(3) does not attract Article 311 (2) it is manifest that no stigma or punishment is involved. The order is passed by the highest authority namely, the Central Government in the name of the President and expressly excludes the application of rule of natural justice as indicated above. The safety value of public interest is the most powerful and the strongest safeguard against any abuse or colourable exercise of power under this Rule. Moreover, when the Court is satisfied that the exercise of power under the rule amounts to a colourable exercise of jurisdiction or is arbitrary or malafide it can always be struck down. While examining this aspect of the matter the Court

A. Nair

would have to act only on the affidavits, documents, annexures notifications and other papers produced before it by the parties. It cannot delve deep into the confidential or secret records of the Government to fish out materials to prove that the order is arbitrary or mala-fide. The Court has, however, the undoubted power subject to any privilege or claim that may be made by the State, to send for the relevant confidential personal file of the Government servant and peruse it for its own satisfaction without using it as evidence."

9. In Brij Mohan Singh v. State of Punjab (AIR 1987 S.C. 948), the Supreme Court observed as follows: -

"7.It is now well settled that while considering the question of premature retirement it may be desirable to make an overall assessment of the Government servant's record, but while doing that, more value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It is possible that a new entrant to a service may have committed mistakes and for that reason he may have earned adverse entries and if those entries of early years of service are taken into consideration for prematurely retiring a Government employee then perhaps no employee would be safe even though he may have brilliant record of service in later years. This aspect was emphasised by this Court in a number of cases namely, Baldev Raj Chadha v. Union of India (1981) 1 SCR 430 : (AIR 1981 SC 70), Brij Bihari Lal Agarwal v. High Court of M.P., (1981) 2 SCR 297 : (AIR 1981 SC 594), Amar Kant Choudhary v. State of Bihar, (1984) 2 SCR 299 : (AIR 1984 SC 531) and J.D. Srivastava v. State of M.P., (1984) 2 SCR 466 : (AIR 1984 SC 630). This Court has

h. m.

consistently taken the view that old and stale entries should not be taken into account while considering the question of premature retirement; instead, the entries of recent past of five to ten years should be considered in forming the requisite opinion to retire a Government employee in public interest. It would be unreasonable and unjust to consider adverse entries of remote past and to ignore the good entries of recent past. We are therefore of the opinion that if entries for a period of more than 10 years past are taken into account it would be an act of digging out past to get some material to make an order against the employee."

10. As the order of premature retirement under F.R. 56 (j) does not affect the right of the public servant, and it is not penal in nature as held by the Supreme Court in various rulings, referred to above, the public servant is not entitled to a hearing or issue of a show cause notice, as contended by the learned counsel for the applicant. No question of making any inquiry after notice to the Government servant disclosing the reasons for premature retirement arises. The concerned public servant cannot complain that the order is made in violation of the principles of natural justice. But at the same time, the Supreme Court declared that the order of premature retirement is subject to judicial review. It may be challenged if it is arbitrary or is actuated by malafides or based on no material or evidence. In B.N. Rangwani v. Union of India (1987 (3) Administrative Tribunals Cases 971), a full Bench of this Tribunal held as follows: -

"20.Thus, all these cases, while recognising the right of competent authority to compulsorily retire a public servant, emphasised that an order of compulsory retirement can be made only in public interest; it cannot be made arbitrarily. The

A. J. D.

public servant has a right to call in question the said order before a judicial forum; it is subject to judicial review. The judicial forum, however, does not sit in appeal over the judgment of the competent authority which passed the order of compulsory retirement. It would only examine the record to satisfy itself whether the order is supported by any material and whether the material is relevant. And if there is an allegation, it would also examine whether it is vitiated by mala fides or colourable exercise of power."

11. Thus, in view of the case law referred to above, the grounds of attack based on the order having been passed in violation of the principles of natural justice or Article 311 (2) of the Constitution fall. As regards the contention of the learned counsel that only the preceding 10 years' record of service should have been taken into account is not borne out by the decision / observations of the Supreme Court in Brij Mohan Singh v. State of Punjab (supra). The Supreme Court clearly said "while considering the question of premature retirement it may be desirable to make an overall assessment of the Government Servant's record, but while doing that, more value should be attached to the confidential reports pertaining to the years immediately preceding such consideration." (emphasis supplied)

12. In the present case, while the respondents did take into account the entire service record of the applicant for the period from 1952 to 1983, the record immediately preceding the passing of the impugned order was given due weightage and it cannot be held that if only the record of the preceding 10 years was taken into account, the action taken by the respondents would have been unwarranted or unjustified. Annexure II filed with the

[Signature]

counter-affidavit which is a summary of the record of the applicant from 1952 to 1983 runs as follows: -

<u>YEAR</u>	<u>REMARKS</u>
1952	Is average worker gets confused in his work.
1957	Quite industrious but lacks initiative. I agree. Willing worker but lacks both intelligence and common sense.
1961-1962	He is trustworthy though has a tendency not to keep papers properly and readily available. Orally warned on a few occasion to be more careful about his work and put more heart into his work.
1966	Inclined to be somewhat rough and tactless in his dealing.
1971	A quarrelsome and unruly character. Cannot get on well with his colleagues. Is in the habit of bullying. Has been discourteous even hostile to public. Both Mr. & Mrs. Ahluwalia made no efforts to adopt themselves to life abroad. They had quarrelled with all their neighbours.
	A drunkard. Is in the habit of bragging about. Cannot be trusted with any classified work.
	A man of questionable and doubtful integrity. Is in the habit of asking for favours from members of public. Asked for monetary inducement from a member of public for the issue of a passport to his wife in her married name. The matter forms part of Department enquiry against him.
1972	Has no respect for established authority and superiors. Is unreliable, indisciplined and untrustworthy and in the habit of using indecent language.
	Drinks heavily with the result that he cannot control himself. His work is extremely shoddy and poor. I would place him in inferior category.
	While serving in Mombasa Shri Ahluwalia was warned for shortage of consular stamps due to his negligence as well as for understamping the sworn affidavits/Visas.
1975	He has not been able to improve either in his output, or his regularity despite repeated request.

A. Bawali

While serving in London, was warned for allowing his depending son to take up gainful employment as Trainee Manager in M/s. Midland Catering Ltd. in U.K.

1977 He was warned for unauthorised absence from office for $3\frac{1}{2}$ days.

1979 Yes, but there is a scope of improvement.

1981 Needs reminding but I do not find him making excuses.

1983 There was a starred Parliamentary question which was replied to in the Rajya Sabha on 6.5.83. The question related to complaints by Indian nationals on behaviour of unnamed official in the Mission which was assumed to be the Assistant concerned here. Has not been keeping good health. He has also been verbally warned to improve his behaviour after the Parliamentary question.
Unpleasant mannered and arrogant individual, shabby in appearance and dress. He was thoroughly disliked by all Indian nationals who came into contact with him. His attitude to his work - finds means of delaying grant of visa are rendering consular work causing needless and avoidable harrassment to visitors. Was reprimanded in writing but none of this had beneficial effect.
Thoroughly unreliable and undesirable character. Received both verbal and in writing complaints against Shri Ahluwalia's integrity. Numerous complaints about his demanding money beyond the prescribed charges.
He was warned on 28.6.73 for loss of Identity Cards in July, 1972 and October, 1972.
Shri I.S. Ahluwalia was posted to the Embassy of India, Prague. After working there for a couple of months, he has been prematurely transferred to Headquarters on medical grounds."

13. Apart from the above summary of records, the minutes of the Review Committee which considered the case of the applicant at its meeting held on 20th May, 1986 also took into account the record in the 'personal file' in the Vigilance Unit. This shows that the applicant was issued a warning on August 29, 1983, which is filed as Annexure I to the counter-affidavit and runs as follows: -

M. Mehta

"The Ministry has desired vide letter No.8204/JS(AD)/83 dated the 20th August, 1983 that the following warning be conveyed to Shri I.S. Ahluwalia, Assistant, in this Mission:

"The Ministry has received adverse reports about the performance of duties by Shri I.S. Ahluwalia, Assistant, Embassy of India, Sanaa. It has been decided to warn him that unless his performance improves within a period of three months and it is so certified by the Ambassador, the Ministry will have to consider further action. All officials, especially those serving in missions abroad, are required to carry out their assigned duties in an efficient and disciplined manner, and to contribute to improving India's image among all those with whom they come into contact in the course of their duties. It is hoped that Shri Ahluwalia, would take this advice in a positive spirit and function as a good member of the Embassy team."

2. In view of the above, Shri I.S. Ahluwalia, Assistant may kindly take note of the above warning."
14. A warning was also issued to the applicant on 31st December, 1979 for not taking prior permission of the Government for his dependent daughter to take up remunerative employment as a Clerk in the Barclays Bank Ltd., London. This warning is filed as Annexure IV to the counter-affidavit. Again as recent as 10th December, 1985, the applicant was issued a warning while he was posted in the Embassy of India, Prague. This is filed as Annexure VII to the counter-affidavit and runs as follows: -

"As desired by the Ambassador following is conveyed to Shri I.S. Ahluwalia: -

(1) With reference to his note dated 23rd October, 1985 regarding handling of accounts work concerning Commercial Section, Shri Ahluwalia is hereby directed that he will have to handle all work concerning Commercial

A. Ahluwalia

Section, which includes preparation of Salary Bills, T.A. Bills and other progressive accounts statements. In case of difficulty, he may take guidance from the Accountant but overall responsibility in this connection will be confined to himself only.

(2) Shri Ahluwalia absented himself from Office on 18th October, 1985 without informing anyone. He is warned hereby that in future any act of this kind will be taken as a serious lapse on his part and liable to disciplinary action against him.

(3) On 25th October, 1985 Shri Ahluwalia left his steel almirah open with keys hanging thereon. It is a serious security lapse for which Shri Ahluwalia is once again warned that if any such lapse is repeated, disciplinary action against him will be inevitable.

2. The above Memorandum may be treated as a serious warning and Shri Ahluwalia should try to behave in a more responsible manner. In case of any repeated lapse the Mission will have no option but to recommend his transfer back to Headquarters."

15. From the above material placed on record, it is clear that this is not a case where the recommendation of the Review Committee or the decision of the Government was based on no material or evidence, warranting the impugned order to be quashed.

16. The learned counsel for the applicant strongly contended that the remarks regarding integrity recorded in the ACR of the applicant were based on unverified complaints and are not in accordance with the instructions of the Government. No inquiry was made to verify whether these complaints were justified. We are inclined to agree that on the basis of unsubstantiated complaints or hearsay, any adverse inference could not be drawn regarding the integrity of the applicant. But even if the adverse remarks in regard

A. Murali

to the integrity are ignored, there is other material in the service records of the applicant pertaining to a recent period of five years preceding the date when the impugned order was passed on which the Review Committee could base its recommendation. In any case, the applicant had made a representation against adverse entries pertaining to the year 1983, which was rejected in July, 1984. His further representation was also rejected.

17. It is significant that on 10th December, 1985, the applicant while posted in the Embassy of India, Prague was warned for a serious security lapse for having left his steel almirah open with keys hanging thereon. Thus, there can be no doubt whatsoever that the Review Committee's recommendation and the decision of the Government in issuing the impugned order were based on definite material and evidence relating to recent service records of the applicant. We have seen the relevant records and find that there was no arbitrariness on the part either of the Review Committee or the Representation Committee in making their recommendations. The representation made by the applicant against the impugned notice for premature retirement was duly considered by the Representation Committee as well on 12.9.1986 and rejected.

18. In view of the above discussion, the application merits rejection and is accordingly dismissed with no order as to costs.

Ch. Ramakrishna Rao *K. Murali*
(CH. RAMAKRISHNA RAO) (KAUSHAL KUMAR)
MEMBER (J) MEMBER (A)
18.1.1988. 18.1.1988.