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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1192/86.

DATE OF DECISION: August-8, 1990

Shri Laxman Singh Applicant.
Shri R.L. Sethi Advocate for the
Applicant.

V/s.

Union of India & Anr. Respondents.
Shri M.L. Verma Advocate for the
Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

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

(P.C. JAIN)
(P.C. JAIN)
MEMBER(A)

(AMITAV BANERJI)
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CHAIRMAN.

(23)

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COURT: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

The applicant, who was appointed as Sub Assistant Supervisor on 29.9.1956 in Military Farms and was promoted to the post of Assistant Supervisor in July, 1973 and to the post of Supervisor in December, 1977, has, in this application under Section 19 of the Administrative Tribunals Act, 1985, challenged the order dated 20.9.1986 in regard to his premature retirement under Rule 48 of the Central Civil Services (Pension) Rules, 1972 (Annexure 'A'). He has prayed that the impugned order be set aside and the respondents be restrained from retiring him prematurely. By the impugned order, the Quartermaster General of India gave notice to the applicant that on completing thirty years of service or thirty years of service qualifying for pension on the 28th September, 1986, the applicant shall retire from service on the forenoon of 28th September, 1986 or on the forenoon of the day following the date of expiry of three months, computed from the date following the date of service of the said notice on him, whichever is later.

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2. The grounds of attack are that the impugned notice is bad in law as it is not based on the record and on the law / rules on the subject. Violation of Article 14 is also pleaded. It is further stated that he had neither attained the age of 55 years, nor had he completed 30 years qualifying service. According to him, his representation dated 14.10.1986 was neither considered nor replied. The respondents have contested the application and have stated that the order has been passed in accordance with law and rules on the subject and, therefore, the applicant is not entitled to any relief. It is also stated that the application is barred under Section 20/21 of the Administrative Tribunals Act and that the applicant has not come to the Tribunal with clean hands inasmuch as he has concealed material facts. No specific representation against premature retirement is said to have been received from the applicant and that an application dated 14.10.1986, referred to as a representation by the applicant, pertained to alleged non-payment of certain arrears of pay and allowances and other dues.

3. We have perused the material on record and have also heard the learned counsel for the parties.

4. According to Rule 48 of the CCS (Pension) Rules, 1972, a Government servant who has completed thirty years' qualifying service, may be required by the appointing authority to retire in the public interest, after giving a notice in writing to him at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice. The other provisions of this Rule are not relevant for purpose of the case before us.

5. As the pleadings of the parties did not unambiguously indicate the period of service put in by the applicant

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which would qualify for pension, we directed the respondents to file a supplementary counter-affidavit in this regard. In the supplementary counter-affidavit, it is stated that the applicant had put in, as on 28th September, 1986, 30 years service qualifying for pension and such a service as on 4th January, 1987 was 30 years 3 months and 8 days. In pursuance of the impugned notice of premature retirement, the applicant retired with effect from 5.1.1987. The notice was served on the applicant on 4.10.1986; the date of service of the notice and the date of its expiry are to be excluded in accordance with the Ministry of Home Affairs O.M. No.25013/14/77-Estt.(A), dated 5.1.1978. Admittedly, the applicant joined service on 29.9.1956. Thus, there is no infirmity in the impugned notice of premature retirement so far as the statutory provision contained in Rule 48 of the CCS (Pension) Rules, 1972 is concerned, and the contention of the applicant that he had not put in 30 years of service qualifying for pension is not tenable in view of the supplementary affidavit filed on behalf of the respondents.

6. The alleged representation dated 14.10.1986 against premature retirement is at Annexure 'B' to the Application. It is with reference to the impugned notice dated 20.9.1986, but 10 of the total 11 points made in para 1 thereof pertain to alleged non-payment of monetary dues on various counts. The remaining one point states that unless the department makes the payment of his salary for the periods mentioned in para (i) above, that period will not be counted towards qualifying service. The prayer in para 2 thereof is to the effect that "In view of these premises, I request your honour, kindly consider the justification of the Order / Notice under reference" and that the Department be directed to pay his long outstanding dues at an early date. The respondents have stated that this is not a representation against the notice
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of premature retirement and no such specific representation has been received from the applicant. The application dated 14.10.1986 is said to have been replied vide letter dated 30.12.1986 (Annexure I to the counter-affidavit). On a perusal of the application dated 14.10.1986, we are also of the view that the thrust is on non-payment of dues and it cannot be treated as a representation against premature retirement.

7. It was urged before us that the impugned notice does not show the application of mind inasmuch as instead of writing afternoon of 28th September, 1986, forenoon of that date is mentioned. This is at best a typographical error and in no case has prejudiced the applicant because as per the notice as well as in fact, he was retired with effect from the forenoon of 5.1.1987.

8. Another point urged before us was that in accordance with the instructions contained in para 3(b) of the Office Memorandum of the Ministry of Home Affairs, Government of India dated 5.1.1978, the applicant should have been offered the lower post. The respondents' case is that he was not found fit even for the lower post. That there is substance in the contention of the respondents will be borne out from what we are going to state in subsequent paragraphs. It may also be stated that the assessment whether a Government servant is fit to be retained in the next lower post from which he was promoted is to be made by the appropriate authority.

9. Another point urged is that there are so many other employees in the office of the applicant, who have adverse entries in their C.R. for the preceding five years and they have 30 years qualifying service to their credit, but they have not been served with notice of premature retirement and, therefore, the impugned notice is arbitrary and in violation of Article 14 of the

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Constitution of India. The applicant has, however, not disclosed the names of such officials. Moreover, the plea of arbitrariness is not substantiated by the facts of this case, as are discussed in the succeeding paragraphs. It may be stated that the relevant departmental files in which the relevant information was put up for review of the case shows that the statement prepared by Major P.C. Katoch, Senior Record Officer, contained a certificate to the effect that 'no eligible person has been left out in the DPC papers'.

10. It was also urged before us that as per the instructions contained in the Ministry of Finance O.M. No.F.12(8)/E-V.(A)/60, dated 6.7.1960, the orders for premature retirement should not have been issued unless it had been verified in consultation with the Accounts/Audit Officer concerned that the applicant had completed or would be completing on the date of retirement qualifying service of 30 years. The respondents have stated that this is an administrative instruction for the guidance of the administrative officers and the applicant is not concerned with this aspect. Obviously, this instruction appears to have been issued with the objective of ensuring that the notice of retirement does not become infructuous on account of administrative lapse in this regard. In the case before us, it is specifically stated in an affidavit that the applicant had completed the prescribed qualifying service on the relevant date.

11. The last point emphasised before us was that ACRs for the preceding five years alone could be seen by the Committee which considered the case of the applicant for premature retirement, and that during these five years, there was no adverse entry in the ACRs of the applicant except for the year 1984, against which he had filed a *Cic*.

representation, which was yet to be decided. This contention is not tenable. It is specifically provided in para 3(c) of the Office Memorandum dated 5.1.1978 (supra) that "While the entire service record of an officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years, or where he has been promoted to a higher post during that 5 years' period, his service in the highest post, has been found satisfactorily." In the case of UNION OF INDIA & ANOTHER Vs. INDERJIT RAJPUT (1990 (1) SLJ (SC) p.79 (March Volume) where also the question of compulsory retirement was involved, the Hon'ble Supreme Court held that "it is the overall picture emerging from the respondent's service record and particularly for the period immediately preceding the order of compulsory retirement on the basis of which the validity of the order of compulsory retirement has to be adjudged and the solitary good entry for the year 1985 after the end of his suspension period cannot be decisive in the above background. ..." Thus, the entire service record is required to be seen. As would be evident from the facts given below, even the record of the preceding five years would not justify the retention of the applicant in service. He was last promoted in December, 1977.

12. It was also urged that the impugned order has not been passed in public interest. We do not find any substance in this contention. The impugned order at Annexure 'A' itself shows that it has been passed in the public interest. Moreover, the facts disclosed in subsequent paras would also show that the action of the respondents cannot be said to have been taken except in the public interest.

13. We have seen the C.R. dossier of the applicant and his service record. He was awarded adverse entries

in the ACR for the year 1959, ACR for the period 1.1.60 to August, 1960, ACR for the year 1962, ACR for the year 1964, ACR for the period January to June, 1965, ACR for the year ending 31st December, 1965, ACR for the period 1.1.66 to 9.5.66, ACR for the period ending 31st December, 1966, and for the period 1.1.67 to 30.8.67. We may ignore these adverse entries because he was promoted in 1977. He was awarded adverse entry for the period 1.1.80 to 24.11.80, which was communicated to him. Again, he was awarded an adverse entry for the period 12.10.83 to 31.5.84, which was also communicated to him. For the period June 84 to May 1985, he was again given an adverse entry which also states that he is lacking in integrity. This too was communicated. Q.M.G. Branch had confirmed in writing to the Ministry that no representation was received from the applicant.

14. The service record of the applicant also shows the following punishments: -

(1) "Offence - Absenting himself without leave.

Period and place - 20 Mar 59 at Military
of offence Farm Delhi

Punishment - "Censured"

Date of punishment 18 Aug 59 "

(2) "Offence - Gross neglect of duty

Period of offence 1965-66 & 1966-67

Punishment awarded - Reduction in pay
by two stages in time scale of pay

Date of punishment 17 Apr. 72

(3) "Offence : Negligence in performance of
Govt. duty

Period of offence: Nov. 1979.

Punishment awarded: "Censured and penal
recovery of 50% of the
loss caused to State
by less credit of 7.480 kg.
Butter.

Date of punishment: 04 Feb. '83."

(4) "Offence : Negligence in performance of
Govt. duty

Period of offence: 25 Feb. '80 to 30 June '80.

Punishment awarded: "Censured and penal recovery

of 5% of total shortage of 23897 kgs.
steam coal.....
Date of punishment: 6 JUN' 83."

(5) "Offence: 1) Supply of sub-standard milk to
troops with intention of personal
gain on 10 Apr' 1980.
2) Attempted to dispose off of 20
litres of diesel (Govt. stores) on
15/6/80 for monetary gains.

Period of offence: 1) 10 April' 1980
2) 15 June' 1980.

Punishment awarded: "Censured"
Date of punishment: 18 JUL' 1985."

15. Thus, from the perusal of the ACR dossier as
well as the service record of the applicant, we do not
find any ground whatsoever for interfering in the action
of the respondents.

16. In view of the above discussion, we find that
the application is devoid of any merit and the same is
accordingly hereby dismissed. Parties will, however,
bear their own costs.

(L.C.)
(P.C. JAIN)
MEMBER (A)

(A.B.)
(AMITAV BANERJI)
CHAIRMAN.

Pronounced today by me in the open
court.

(L.C.)
8/8/1990