

IN THE CENTRL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. 1310/87

Date of decision 5.6.92

J.L. Tandon

Applicant

Shri D.N. Goburdhan

Counsel for the applicant

vs.

Union of India & Ors.

Respondents

Shri A.K. Sikri with Shri V.K. Rao

Counsel for the respondents

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. P.S. Habeeb Mohamed Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?
 2. To be referred to the Reporter or not?
 3. Whether their Lordships wish to see the fair copy of the judgment?
 4. Whether it needs to be circulated to other Benches of the Tribunal?
- (Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal singh, Vice-Chairman (J).)

J U D G M E N T

The applicant joined the Central Road Research Institute in the year 1964 as Scientific Officer and was given due promotions upto 1979. According to him, he is an eminent Scientific Officer and has done research work on "Emergent Road Construction in Desert Areas" and was also preparing research work on "Non-bitumenous road-laying", but he has been repeatedly harassed by vested interests in the Department. He further contends that his research work was being throttled by harassing him by not giving his salaries and denying him promotions. His promotion was due in 1979, but deliberately he was not considered. Later, in the year 1981 he was considered alongwith 17 other persons. He, therefore, in the original application prayed for the relief for a direction to the respondents

Lambly

to pay him the salary and allowances while working as Scientist Grade 'C' from November 1986 to August, 1987. He also prays for his promotion with effect from 1981 as Scientist Grade 'C'. He has also prayed for quashing of the Memorandum dated 17.7.87 by which the applicant was directed to appear before a Medical Board. Later on, the applicant moved an application for amendment of the O.A. and impugned Annexure-II dated 7.10.88, memorandum issued by the Administrative Officer of Central Road Research Institute. The third paragraph of this memorandum reads as follows:

"In the meantime his case under FR(56)J was taken up by the Review Committee and the committee recommended for his compulsory retirement under FR 56 (J). Director, Central Road Research Institute accepted the recommendations of the committee and a Regd. Notice No. 8(25)/87 Estt. dated 8.8.1988 was sent to his last known address but the same returned back unacknowledged so the notice was published in the Newspapers in the Hindustan Times & IndianExpress on 24.9.88. Three months notice period commences from the date of the publication in the afore-said newspapers."

3. By amending the O.A., he has added paragraph (ee) for quashing this memorandum. In the amended O.A., the reliefs prayed for now stand for issuance of an appropriate direction to the respondents to disburse his salary of 10 months; direction to the respondents to pay his salaries as detailed in Annexure 'E'; direction to the respondents to give retrospective effect to the promotion granted to him as Scientist Grade 'C' in respect of 1981 vacancy; direction to the respondents not to give effect to memorandum dated 17.7.87; direction to the respondents for confirming the applicant as Scientist Grade 'C' and the last relief (ee) has also been added.

4. The respondents on notice appeared and replied to the amended O.A. Their stand is that Annexure-II is not the impugned order which is said to have been passed on 7.10.88. They contend that the applicant was an absentee for a period of 192 days in the year 1986; they also contend that in the years 1984 and 1985 also, he was a habitual absentee from work and remained absent on all types of leave granted to an employee. They, therefore, decided to retire the applicant compulsorily from service under FR 56 (J) and the case was examined by the Review Committee. After receiving the recommendation of the Review Committee, the applicant

2/11/88

22

was directed to be retired from service under FR 56 (j). The Director General, Central Road Research Institute, accepted the recommendation of the Committee and a registered notice was sent by post on 8.8.88 to the applicant's last known address, but the same was returned back unacknowledged. So, the notice was published in the leading newspapers of India in 'Hindustan Times' and 'Indian Express' on 24.9.88 in which they mentioned that three months notice commences from the date of publication in the aforesaid newspapers. The respondents, therefore, contend that the impugned order is the order dated 8.8.88 and not 7.10.88. They also contend that the applicant has not availed the departmental remedy of making a representation as required under Section 20 of the Administrative Tribunals Act of 1985 (hereinafter referred as 'Act'). Hence, this O.A. is premature. They justify the order of compulsory retirement of the applicant from service on the ground that by remaining constantly on leave, the work of the Institute suffered and the applicant became a liability and a dead wood for the Institute. Therefore, on recommendation of the Review Committee, a decision was taken to retire him compulsorily under FR 56(j).

5. We have heard the learned counsel for the applicant, Shri D.N. Goburdhan, and the learned counsel for the respondents, Shri A.K. Sikri. On being pointed out by the Bench as to which is the main relief the applicant seeks in the amended O.A., according to Rule 10 of the Rules framed under the Act, the learned counsel for the applicant replied that the prayer (ee) is the main relief while other reliefs are consequential in nature. We, therefore, proceed to examine the validity, correctness and legality of the order passed under FR56 (j), compulsorily retiring the applicant from service. We ignore the objection to the respondents that the order of retirement is 8.8.88 and not the impugned order Annexure-II dated 7.10.88. After rejecting this technical objection of the respondents, we proceed to consider the case on merits as to whether this relief can be granted to the applicant according to law.

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6. Earlier, this Tribunal had directed the respondents to keep the Review Committee report ready for perusal by the Bench which has been produced along with other relevant documents. We have gone through these documents which were in a sealed cover and noted down the relevant particulars.

7. Learned counsel for the applicant cited in his support the case of Ram Ekbal Sharma vs. State of Bihar (AIR 1990 S.C. 1368). The apex court in this two Judge Bench judgment was of the opinion that even if an order of compulsory retirement is couched in an innocuous language, without making any imputations against the Government servant who is directed to be compulsorily retired from service, the Court, "if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the Government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes. Mere form of the order in such cases cannot deter the Court from delving into the basis of the order if the order in question is challenged by the concerned Government servant." In para 29 of this judgment, their Lordships found that the impugned order was not made bonafide but for collateral purposes and on extraneous consideration by way of punishment and, therefore, the order of compulsory retirement was quashed. The learned counsel for the applicant has also cited the case of R.P. Malhotra vs. Chief LT. Commr. Patiala (AIR 1990 S.C. 2055). This is also a two Judge Bench decision of the apex court. In this judgment their Lordships arrived at the conclusion, on the facts and circumstances of the case, that the Government servant had not lost his utility in service.

8. We proceed to examine the three Judge Bench judgment in the case of Baikuntha Nath Das & Anr. vs. Chief D.M.O., Baripada (J.T. 1992 (2) SC 1). In this case their Lordships have laid down the law which we reproduce below for convenience:

"(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) malafide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (ii) above."

Thus, the order of compulsory retirement is not to be taken as a punishment to the Government servant. It also implies no stigma and no suggestion of misbehaviour. The criteria should be the utility of the Government servant in the public interest and he can be retired compulsorily if it is in the public interest. The order can be passed only after a subjective satisfaction of the Government. It has also to be seen whether the Review Committee has considered the entire record of service before taking any decision on the basis of the performance during the later years of his service. The record so considered would naturally include the entries in the confidential records, character rolls, both favourable and adverse. In judicial review, the order of compulsory retirement cannot be quashed merely on the showing that while passing it, any uncommunicated adverse remarks were also taken into consideration.

9. On the anvil of Shri Baikuntha Nath Das (supra), we have examined the case of the applicant. We have gone through the minutes of the Review Committee for the gazetted staff who went in great detail while concluding that the applicant should be retired prematurely. While, examining the record, they were of the view that the applicant has completed 30 years of service. They arrived

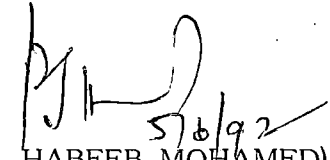
at the conclusion, on the basis of the records, that Shri J.L. Tandon has been abstaining himself for long periods either on medical grounds or otherwise since 1983. Then they have proceeded to consider the records of 1984, 1985 and 1987 and concluded that the applicant is not interested in the research work at C.R.R.I. Because the applicant was absenting from work on medical grounds, he was directed by the respondents to get himself medically examined, but the applicant never obeyed that order. They were also of the opinion that the work done by the applicant during the past two years is nil and hence they concluded on these grounds that it is not advisable to continue to keep such a Scientist on the rolls of the Institute since there is absolutely no contribution from his side to the research work. These were the grounds considered by the Review Committee before the order of his retirement could be passed on 8.8.88. The conclusion of the Review Committee that the applicant's non-contribution to the Institute indicates that he has no utility to the institution in the public interest and, therefore, they decided to retire him compulsorily. The judicial conscience has to be satisfied that the order of compulsory retirement is not passed mala fide, that it is based on ^{not} evidence and that it is not arbitrary. We have carefully examined the record and conclude that the element of mala fide is altogether absent. No allegations have been made in the amended O.A. with regard to the malafide against either the Director or the members of the Review Committee. On perusal of the record, it is also evident that ^{sufficient} evidence and grounds were available to the Review Committee when they arrived at the conclusion to retire the applicant compulsorily. The order of compulsory retirement of the applicant cannot be said to be arbitrary and any reasonable person would form the same opinion on the given material as has been done in the case of the applicant by the respondents. The overall conspectus of facts and circumstances were taken into consideration while passing the impugned order and hence it cannot be said that they have abdicated their responsibility in passing the impugned order.

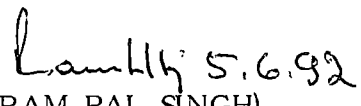
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10. We have, after lifting the veil, tried to find out as to whether the impugned order has been passed as a measure of punishment for the misconduct on the part of the applicant. The impugned order appears to have been passed because the Review Committee was of the view that the applicant is a dead wood and should be chopped off in public interest. On delving into the impugned order, the basis appears to be for retiring the applicant due to his uselessness for the institution.

11. The counsel for the respondents also contended that the applicant has not filed any representation as required under Section 20 of the Act. As we are of the view that the order of compulsory retirement was in accordance with the provisions of law and also in accordance with the principles laid down in the judgment of Shri Baikuntha Nath Das (supra), we need not give any opinion on this argument.

12. Consequently, we are of the view that this O.A. is completely bereft of any merit. We, therefore, dismiss this O.A. and refuse to interfere in the order of premature retirement of the applicant from service under FR 56 (J). Consequential reliefs, as prayed for, are also rejected. Parties are directed to bear their own costs.


(P.S. HABEEB MOHAMED)
MEMBER (A)


(RAM PAL SINGH)
VICE-CHAIRMAN (J)