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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1384/87

Date of decision: 19-1-93.

N.K.Oberoi

...Applicant

Versus

Union of India & Others

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K.RASGOTRA, MEMBER(A).

For the applicant ...Shri V.V.Bagga, Counsel

For the respondents ...Shri K.C.Mittal, Counsel

JUDGMENT (ORAL)

(BY HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN) :

The applicant has challenged in this case the order of compulsory retirement Annexure I dated 19-6-87 passed by the President in public interest in exercise of the powers conferred by Article 459(h) of the ^{Civil} Central Service Regulations he being satisfied that it is in public interest to retire the petitioner from service on the forenoon of 1st August 1987 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 notice on the petitioner, whichever is later.

2. The petitioner who was a Foreman came to be promoted as Junior Scientific Officer in the year 1980. He was holding the said post until the impugned order came to be

passed. The grievance of the petitioner is that the impugned order has been passed arbitrarily; that it is vitiated by mala fides and that the consideration of the case of the petitioner for compulsory retirement was not made within the time prescribed by the guidelines issued by the Government in this behalf. For the purpose of satisfying ourselves that the case of the petitioner has been properly considered, we thought it proper to look into the original records. The original records were placed before us. We have perused the same. We find that the Review Committee constituted for this purpose consisted of Secretary, Defence Production and Supplies as the Chairman and the Joint Secretary, Ministry of Human Resource Development as the other member. On a perusal of the ^{/minutes of the} said Committee, we find that the case of the petitioner has been duly considered with reference to the confidential records of the petitioner from the year 1982 onwards when he was functioning as a Junior Scientific Officer. The opinion formed by the said Committee on consideration of the confidential records from the year 1982 onwards is that the performance of the petitioner has been unsatisfactory and that his attendance was also irregular. Emphasis is laid mainly on his performance from the year 1982 onwards. The Committee has on consideration of the petitioner's case with reference to the confidential reports of the year 1982 recommended that though he does not deserve to be continued in the position of the Junior Scientific Officer, he may be retained in the lower post of Foreman if he was willing to

accept the same. The petitioner was offered retention in the lower post of Foreman which offer he declined to accept. The petitioner made a representation for reviewing the decision which also was considered by another committee consisting of Secretary, Department of Education and Joint Secretary, Department of Power. After a careful review of the petitioner's case and considering the contentions raised by the petitioner in his representations, it is recorded that on an over-all assessment of the confidential reports, particularly for the last five years, the performance of the petitioner is found to be just 'above average'. They have recorded a finding to the effect that the petitioner is not discharging the duties of his office with competence, efficiency and effectiveness expected from the holder of the post. On the basis of the performance reflected in the Confidential Reports, it is stated, that the petitioner has not come up--to the expectations. On an objective consideration of the petitioner's case, the Review Committee affirmed the earlier decision. On a perusal of the records, we are satisfied that a fair and objective consideration was given to the service records of the petitioner. The learned counsel for the petitioner, however, contended that the petitioner has not been communicated any adverse entries in the confidential records during the entire period of service as Junior Scientific Officer from the year 1982. He submitted that unless any adverse remarks have been communicated, it must be presumed that his work and conduct was satisfactory. If his work was satisfactory, it was

maintained that the question of forming an ^{/adverse} opinion about his utility to render adequate and competent service would not arise. It is necessary to bear in mind that what is required to be taken into consideration is the over-all performance of the government servant reflected by the entries in the confidential records. That the government servant is 'just average' or 'just adequate' for the job is not enough, ^{/to} What the authorities have form the opinion is about his utility to render adequate and competent service in the years to come. Merely because the petitioner has not been communicated any adverse entries in the confidential records, it does not follow that the President is not entitled to take into consideration such uncommunicated adverse entries in the confidential records.

The Supreme Court has ruled in JUDGMENTS TODAY 1992(2) SUPREME COURT P.1 - SHRI BAIKUNTHA NATH DAS AND ANOTHER V. CHIEF DISTRICT MEDICAL OFFICER, BARIPADA AND ANOTHER, that 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.

3. It was next contended that the authorities having granted the medical leave from time to time, they were not justified in taking into consideration his absence from duties during those periods as one of the factors for forming the necessary opinion. Firstly, it is necessary to note that it is incidentally noted that the petitioner's

attendance was also irregular. The second Review Committee has affirmed the decision entirely on the basis of the performance of the confidential records without taking into consideration the irregular attendance of the petitioner. Hence, it is not possible to hold that the impugned order is vitiated on the ground that irregular absence of the petitioner has been taken into account in forming the necessary opinion.

4. It was also contended that the case of the petitioner was required to be considered before six months of the petitioner's retirement. The period prescribed by the guidelines is not statutory and cannot be construed as mandatory. Merely because the time schedule fixed in the guidelines has not been strictly followed, it is not possible to hold that the order is vitiated.

5. The learned counsel for the petitioner contended that the order is vitiated because the Director was biased against him in the context of certain transfers. It is necessary to point out that so far as the review of the petitioner's case is concerned, the Director had no role to play whatsoever. Apart from the bald assertions, there is no material before us to draw an inference of bias or mala fides.

6. For the reasons stated above, this petition fails and

is dismissed. No costs.

Shyam
(I.K.RASGOTRA)

MEMBER(A)

Malimath

(V.S.MALIMATH)
CHAIRMAN

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