

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Misc. Application in
Regn. No. OA-1429/87.

Decided on 18.9.1989.

Brij Raj Bahadur

.....Applicant.

Vs.

Union of India & Ors.

.....Respondents.

Present: Mrs. Sarla Chander, counsel for applicant.
Mr. N.S. Mehta, counsel for respondents.

ORDER

This order will dispose of the respondents' claim of privilege made by the Secretary, Department of Personnel & Training by filing an affidavit in this behalf. The Secretary has claimed privilege under Sections 123 and 124 of the Evidence Act as also Article 74(2) of the Constitution on the grounds set forth in paragraph 3 of the affidavit.

2. We have given our earnest consideration to the entire matter and are of the considered view that the *Secretary of the* public interest involved in maintenance of the noting portion of the relevant file is far greater than the public interest involved in rendering a decision in this case. It may be added that we have gone through the entire record and would give the same due consideration while deciding the matter. Interests of the applicant would not, therefore, suffer by non disclosure of the noting portion. The disclosure would seriously hamper candour and expression of the freedom of opinion by high dignitaries of the State in the discharge of their public functions and would inhibit such functionaries from expressing their views fearlessly and objectively. The claim for privilege in respect of the noting portion is, therefore, hereby upheld. As regards the correspondence portion, the same has been directed to be disclosed.

Announced.

D.K. Chakravorty
(D.K. Chakravorty)
Administrative Member

A.S. Sekhon
(A.S. Sekhon)
Vice Chairman.

18-9-89

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For the Applicant

... Mrs. Sarla Chander, Advocate.

For the Respondents

... Mr. N.S. Mehta, Advocate.

Shri B.S. Sekhon:

This Application raises the question of validity of Order dated 21st April/2nd May, 1987 (Annexure-1) whereby the applicant, a member of Indian Administrative Service (for short the 'Service') was retired prematurely. The order was passed by the President in exercise of the powers conferred by Rule 16(3) of the All India Service (Death-cum-Retirement Benefits) Rules, 1958 (for brevity sake called the 'Rules'). The applicant having been appointed to the Service on April 2, 1958 was to superannuate on February 28, 1988 (about 10 months subsequent to the passing of the impugned order). The impugned order reads as under:-

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"In exercise of the powers conferred by sub rule (3) of Rule 16 of the All India Service (Death-cum-Retirement Benefits) Rules, 1958, the President, in consultation with the Govt. of Rajasthan hereby requires Shri Brij Raj Bahadur a member of the Indian Administrative Service borne on the cadre of Rajasthan and who has already attained the age of 50 years to retire with immediate effect, in public interest from service.

A cheque for a sum equivalent to the aggregate amount of his pay and allowances for a period of three months calculated at the same rate at which he was drawing them immediately before the date of this order is enclosed."

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The applicant was appointed to the Senior Scale in June, 1956, to selection grade on December 1968 and to Super scale in 1972 and to Rs. 3000/- scale from ^{After} August, 1979. / referring to four Memorials to the President for fixing the special grade of Rs. 3500/- and rejection thereof by the President in 1985, approaching the Tribunal and moving the Hon'ble Supreme Court, the petitioner has averred that his action in moving the Hon'ble Courts has displeased the Govt. who did not want him to fight in the Court for his due claim and the Govt. was and as annoyed. / a result he received the impugned order.

2. The salient grounds on which the impugned order has been assailed are that it is a hasty decision to retire him compulsorily without assigning any reason of public interest, but actually it has been passed for extraneous reasons and is arbitrary, illegal and invalid. In the facts and circumstances of the case, it is an order of punishment resulting in the victimisation. Rule 16(3) of the Rules gives a lot of power to the Govt. for arbitrariness and discriminatory action and retire a person in the garb of public interest. The Hon'ble Supreme Court has, therefore, stressed to cut down the scope of arbitrariness and discrimination by explicitly laying down in various rulings that public interest must be specified and reasons for public interest must be given before passing such an order. The order is illegal as it casts ⁱⁿ stigma on him and/his service record adverse remarks were put in 1982-83 which is illegal and was not communicated to him until January, 1986. He was sent for two training programmes in the last two years prior to his retirement and no policy of public administration would justify

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training a senior officer for nothing. The Applicant has also relied on the dicta of the Supreme Court in Baldev Raj Chadha vs. Union of India¹ and in Union of India vs. M.E. Reddy and another, adding that he had put in 35 years of service and crossed the Supertime scale and had never been found inefficient, how just 9 months before he has become a dead wood to the Government.

3. As per the defence set out in the counter, the performance of the Applicant had been deteriorating steadily, his approach was becoming impracticable and he was given light jobs in the last 10 years. But even on such jobs as Resident Commissioner, Govt. of Rajasthan at New Delhi or Commissioner of Properties, Rajasthan, he was not able to pull his weight, leading to his supersession by the junior colleagues. His activities had unfortunate impact on the junior colleagues, a detailed report obtained from the State Government of Rajasthan, showed the deterioration in his performance. He did not produce any Certificate/Diploma/Degree on his return from Study Leave. He did not properly attend to the work, when he was appointed Commissioner Departmental Inquiries, with the result the arrears kept piling up as he kept raising extraneous issues. Respondents have also denied the allegations about the mala fide, prejudice against the Applicant and also refuted the allegations about the impugned order being illegal, arbitrary or based on prejudiced/extraneous considerations on that the same was ^{-sd} actuated by any alleged prejudice link/with the conduct of the Applicant in seeking redressal of his grievance including submission of memorials to the President.

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1. AIR 1980 SC 70
2. AIR 1980 SC 563.

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4. We have heard the learned counsel for the parties and have also waded through the relevant file No. 25013/2/86-AIS II including the noting portions thereof.

5. We may, in the first instance, deal with what may be termed as peripheral issues. The first of such issues relates to the assertion of the Applicant that the impugned order casts a stigma on him. A plain perusal of the impugned order belies the aforesaid assertion. Besides, it is now well settled by an unbroken catena of authorities that a simple order of compulsory retirement is not stigmatizing.

6. The next such issue relates to the point that the impugned order does not disclose any reason as to how it was in public interest to retire the Applicant under Rule 16(3) of the Rules. Suffice it to state in respect of this point that the reason has been given in the impugned order and the material on the basis of which the competent authority has reached the conclusion that it is in public interest to retire the Applicant from service need not find a place in the order. Such material should, however, ^{be} there in the relevant notings, lest there should be mis-use or abuse of the provisions in question.

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7. One of the main points submitted by the learned counsel for the Applicant was that the impugned order was made only 9 months before the Applicant attained the age of superannuation (to be precise, the period is about 10 months) and that it is not a proper or permissible exercise of the powers vested in the President under Rule 16(3) of the Rules. To appreciate the aforesaid submission, we may reproduce the aforesaid sub-rule. It reads:

" The Central Government may, in consultation with the State Government concerned and after giving a member of the Service at least three month's previous notice in writing, (or three months' pay and allowances in lieu of such notice) require that member to retire in public interest from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice."

Elaborating the point, the learned counsel submitted that as the review had already been carried out in the case of the Applicant, after he had attained 50 years of age, the competent authority could not and should not have retired the Applicant subsequent thereto. So far as the question of competence of the Central Government to retire a Member of the Service after he has completed 30 years of qualifying service or has attained 50 years of age subsequent to the review carried out on his attaining the age of 50 years is concerned, the same would admit of little doubt. The expression "or on any date thereafter" used in the above extracted sub-rule shows beyond any doubt whatsoever that it is within the competence of the Central Government/President to retire a Member of the Service even subsequent to the review carried out on his attaining the age of 50 years or on any date prior to the date of his superannuation provided that the other provisions laid down in this sub-rule stand satisfied. This aspect seems to be beyond the pale of controversy. It may, however, be incidentally added that the move to retire the Applicant was as early as 16th January, 1986 when the Chief Minister of Rajasthan wrote to the Deputy Minister to Govt. of India, Department of Personnel & Training. submitted
It was also ~~said~~ by the learned counsel in the alternative that the review after carrying out the review at the age of 50 years or completion of 30 years of qualifying service is to be done

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only after the same is justified by any exceptional reason such as the subsequent work or conduct or the state of physical health which may make early retirement clearly desirable, as enjoined by the guidelines dated 4-2-1978. According to the learned counsel, such is not the case here. We are, however, satisfied that it was a case which is fully covered by para 2(i) of the guidelines dated 4th February, 1978.

8. Before grappling with the next point, which, so to say, is the central point in this case, we may pause here to point out that as per the dictum of the Supreme Court in 'Union of India v. M.E. Reddy' (AIR 1980 SC 563), which was also a case of compulsory retirement under Rule 16(3) of the Rules, the Government has/absolute power to retire a Member of the Service under the aforesaid sub-rule provided the order is passed in public interest and the same is neither mala fide nor based on extraneous considerations. Keeping in view the aforesaid legal position and bearing in mind the need to ensure that such an order is not passed by misusing or abusing the powers conferred on the competent authority under Rule 16(3) of the Rules, we are examining the matter further.

9. During the course of arguments, the learned counsel for the Applicant was at pains to stress that this is a case where the State Government and the authorities concerned got annoyed and prejudiced against the Applicant in view of his making complaints and submitting Memorials to the President for redressal of his service grievance and that the ACR written by Shri M.M.K. Wali, who had superseded him, for that reason, could not be expected to be objective and should not be taken into account. The learned counsel for the respondents countered by submitting that this Service being a premier and top service in the country, it is expected that the Members of the Service

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should discharge their duties efficiently, devotedly and that there is adequate material to establish that the Applicant had outlived his utility and was, so to say, a dead wood, which required to be weeded out. So far as the allegations against Shri Wali are concerned, it is pertinent to notice that the Applicant has himself stated in para 2 of his representation dated September 4, 1985 addressed to the Chief Secretary, Govt. of Rajasthan as under:

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" These senior appointments covered both the judiciary and civil side and, Wali was one of the persons on whom, as I have stated in my memorial to the President of India communalists cast their favour. I have stated in the memorial the facts given by Shri Jagan Nath Pahadia himself. I will repeat what is stated in the memorial that Wali himself had no hand in the benefit received by him, and he tried his best to be of assistance to those who had been unfairly dealt with. This is credit to him as a person. After seeing how much he is doing for the weak and down trodden in Delhi as Lt. Governor, I am an admirer of his in so far as his attitudes are concerned towards fellow humans. I repeat that there is no allegation of any kind (moral or otherwise) against Shri Wali. I will say the same in the Supreme Court or to the passing winds, as circumstances may require."

10. The above extracted portion in the Applicant's letter would show that Shri Wali was not prejudiced against the Applicant and bore him no ill will. Further more, the remarks in the ACR made by Shri Wali had also been accepted by the Chief Minister, Rajasthan for the period 1981-82.

The allegations about the authorities getting irked/prejudiced against the Applicant about fighting his case in the Court or submitting memorials to the President have been controverted. We find it somewhat difficult to countenance the submission that such highly placed authorities as the Chief Minister/Ministers in the Central Government including the Prime Minister could be swayed by such considerations.

11. Turning to the question of public interest, we may say at the very outset that the question as to whether or not it is in public interest to prematurely retire a public servant, is for the competent authority to consider and determine. It is stating the obvious that such a question has to be considered and determined on the basis of the relevant records which in this case is the Service record and other relevant records relating to the performance of the officer concerned. As rightly contended by the learned counsel for the respondents, it is not within the province of the Court/Tribunal to sit in judgment over the determination of the competent authority and to substitute the determination of the competent authority by its own findings. This takes us to the question as to whether there was in existence any material which justified retirement of the Applicant in public interest. Such material is to be considered only for the period subsequent to the review carried out after the Applicant had attained the age of 50 years. In the ACR pertaining to 1981-82, the Reporting Officer Shri M.M.K.Wali had certified the integrity of the Applicant and after stating that he has a sharp mind, stated that he is getting increasingly eccentric as time goes by. The following other observations were also made:

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"One has a great deal of sympathy for him on account of his good heartedness, but it is always a problem to find jobs for him in which he may cast the least embarrassment."

As already stated, this was accepted by Shri Shiv Charan Mathur, Chief Minister, Rajasthan. In the ACR pertaining to the period April 1982 to March 1983, the integrity of the Applicant was certified and the following remarks were made:

"This job was temporarily created - mainly, in fact, to accommodate him. Nothing much was expected of him and he proved true to expectations. Here is the sad case of an officer, who though basically very intelligent, has become crankier and crankier with time."

The Applicant remained on privileged leave during the period February 22, 1983 to May 30, 1983 and was on study leave for a period of two years thereafter and no ACRs were written for the aforesaid period of two years. After a perusal of the relevant noting portions, we find that the matter had been considered by the competent authority thoroughly as well as objectively, so much so that the information on the following points was also called for from the State Governments:

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- (i) A factual report on his work and performance as Commissioner for removal of public grievances from 29.7.75 to 1.12.79.
- (ii) A factual report on his work and performance as Resident Commissioner, New Delhi from 8.12.79 to 24.2.82.
- (iii) A factual report on his work and performance as Controller, Rajasthan Government Property Hqrs.,
- iv) A factual report about what the officer did during the period of study leave from May 83 to May 1985.
- v) A factual report on his work and performance as Commissioner, Departmental Enquiries from 5.6.85 and upto date.
- vi) A factual report on any other acts of omission and commission of the officer since 1981.

As has been brought out in the written statement, the State Govt. furnished the following information on the aforesaid points:-

1. Shri Brij Raj Bahadur worked as Commissioner for Removal of Public Grievances for the period from 29.7.75 to 1.12.79. From the record it appears that during the entire part of this period he worked well. He was found to be very considerate towards aggrieved persons, weaker sections of the society and tried to give them relief as best as he could. His performance during that period was reported to be good. However, he started developing tensions during the later part of this period and this started getting reflected in the output. During this period he started shooting off letters to Secretaries to Govt. of India and even sent a letter to Prime Minister when he was asked to desist.
2. Since he was separated from his family and was living alone, it was thought proper to post him to Delhi. The idea was that this might bring him some relief but that did not prove to be beneficial to the State Govt. His performance as Resident Commissioner was only to act as an agency for passing of the correspondence from State Govt. to Govt. of India and from Govt. of India to State Govt. There was complaint to the effect he was using the facilities provided to him for his personal ends, but since no specific facts were mentioned the matter could not be enquired into. The fact that his performance was not quite satisfactory could be appreciated from the assessment in the ACR of Shri Brij Raj Bahadur for the year 1981-82 wherein it has been specifically stated that it was a problem to find posts for him, in which he may cause the least embarrassment.
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3. On account of none-too-happy performance Shri Brij Raj Bahadur was posted as Controller, Rajasthan Govt. Property, Hqrs. Delhi. The post was created primarily to accommodate him at Delhi. He could, however, not get any Rajasthan State property vacated nor could settlements be arrived at. During this period the behaviour of the Officer was very quaint. This has very clearly been reflected in the ACR which has been adversely reported upon.

4. During the period from May, 1983 to May, 1985 he was on study leave. It is not known whether he was a regular student during this period or was studying as a private student. The outcome of the studies is also not known since Shri B.R.Bahadur has neither produced any degree/diploma/certificate to the effect that he had completed his studies successfully, nor has furnished any document in token of his having done so.

5. The work and performance as Commissioner, Departmental Enquiries from 5.6.85 to 21.1.86 can very well be seen from the papers enclosed with C.M's D.O. letter No. F.10(3)Appts(A.1)69 dated January 18, 1986. Instead of giving his findings on the issues and charges to be decided upon, he has in most cases digressed and raised issues not very relevant to the enquiry. A note appended alongwith the pending enquiry cases (enclosed with the aforesaid D.O. letter from C.M.) clearly indicates that the cases kept on piling up and the number of pending cases went on increasing. The Presenting Officers were not heard and cases were adjourned. A total mess was created. It was on this account that Shri Bahadur was relieved from the post of Commissioner, Departmental Enquiries on 21.1.86 and since then he is awaiting.

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The information furnished by State Govt. regarding point No. 1 and above would not seem to be material. There was, however, good deal of material in regard to the other points on the basis of which the competent authority were amply justified in coming to the conclusion that the Applicant had outlived his utility and that it was in public interest to retire him prematurely. We may say so, if we may that the public servants are expected to perform their duties efficiently, devotedly and the Members of the Premier Service such as IAS are expected to perform their duties efficiently, devotedly and with a sense of dedication. It may be incidentally mentioned that the Chief Minister acting

as the Reviewing Authority, who had accepted the remarks of the Reporting Officer in the ACR 1981-82, was different from the Chief Minister who had set the ball rolling vide his D.O. dated 16th January, 1986. This fact too has an importance all its own. On the facts and circumstances of the instant case, we have no doubt whatsoever that there was ample justification, relevant material in existence for making the impugned order and that the order is not tainted with any malice in fact or law. can be
Nor the impugned order is said to be based on any prejudice and/or extraneous considerations or material. We may also add that the consultations with the State Govt. as enjoined by Rule 16(3) in this case have been effective and meaningful.

12. In the premises, we find little merit in the Application. Consequently, the same is hereby dismissed. In the circumstances, we make no order as to costs.

D. Chakravorty
(D.K. Chakravorty)

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B. S. Sekhon
(B.S. Sekhon)

VC.

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RK