

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

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Regn. No. OA 1483/87

Date of decision: 20.10.1989.

Shri Y.R. Minocha

.....Applicant

Vs.

Union of India & Others

.....Respondents

For the Applicant

.....Shri B.S. Mainee,  
Counsel

For the Respondents

.....Shri Inderjit  
Sharma, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. P.C. JAIN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed  
to see the Judgment? Yes

2. To be referred to the Reporters or not? Yes

(The judgment of the Bench delivered by  
Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who had worked as Divisional Electrical  
Engineer, Northern Railway filed this application under  
Section 19 of the Administrative Tribunal's Act, 1985  
praying that the impugned order dated 29.1.1987 whereby he  
was retired from Government service and the impugned order  
passed by the Appellate Authority on 17.6.1987 be set aside  
and that he be reinstated in service with consequential  
benefits. The application was filed in the Tribunal on  
15.10.1987.

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2. The facts of the case in brief are as follows. The applicant was recruited through the Union Public Service Commission as temporary Assistant Electrical Engineer of the Indian Railway Service with effect from 30.3.1963. He was promoted to the post of Divisional Electrical Engineer, senior scale with effect from 25th August, 1973 which post he held till the passing of the impugned order. He was substantively appointed to the junior scale of the Indian Railway Service of Electrical Engineers with effect from 16.11.1983. He was confirmed with effect from 13.2.1984 in February, 1987. He received by registered post the impugned order dated 29.1.1987 retiring him prematurely.

3. The contention of the applicant may be summed up as follows:-

(i) The impugned order dated 29.1.1987 has been passed in violation of the criteria and procedure laid down by the Railway Board in their letter dated 15.11.1979. According to the criteria and procedure laid down therein, the case of the railway servants covered by Rule 2046(h) should be reviewed six months before they attain the age of 50/55 years for complete 30 years service/30 years of qualifying service, whichever occurs earlier (Rule 2046(h) corresponds to FR 56(j)). This was not complied with in the case of the applicant. His date of birth is 13.9.1930 and his date of appointment is 30.3.1963. He attained the age of 50 on 13.9.1980 whereas he was retired prematurely on 29.1.1987, i.e., when he was about 57 years, which is against the rules.

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(ii) A Committee shall be constituted by the Railway administration to consider whether an officer may be retired from service in the public interest or whether he should be retained in service. This also has not been complied with. The Committee which is required to review the applicant's case within the time schedule has not made any recommendations for prematurely retiring him.

(iii) According to the criteria to be followed by the Committee in making its recommendations, the basic consideration in identifying such officer should be the fitness/competence of the employee to continue in the post which he is holding. If he is not found fit to continue in his present post, his fitness/competence to continue in the lower post from where he has been previously promoted, should be continued. No officer should ordinarily be retired on ground of ineffectiveness, if in any event he would be retiring on superannuation within the period of one year from the date of consideration of his case.

(iv) In the case of the applicant, he was confirmed in Class I junior scale on 13.2.1984, implying thereby that he had good Annual Confidential Reports till 1983-84. For 1985-86, his performance is stated to be "Very Good". There has been no charge-sheet or disciplinary proceeding contemplated or pending against him. He was also not involved in any case of fraud or embezzlement. He was known for his honesty and integrity. He was holding the post of Divisional Electrical

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Engineer since August 1973. In view of his "Good" and "Very Good" Annual Confidential Reports, there was no good ground for his premature retirement. As he was to retire in 1988, on attaining the age of superannuation, he could not have been retired prematurely in 1987.

(iv) The representation sent by the applicant on 13.2.1987 was rejected by the Appellate Authority on <sup>on</sup> 17.4.1987 by passing a non-speaking order.

4. The case of the respondents as stated in their counter-affidavit may be summed up as follows:

(i) The applicant was considered for substantive appointment in the Junior Scale of the Indian Railway Service of Electrical Engineers by the DPC/UPSC in 1978, 1980, 1981 and 1982 but he was assessed as "not yet fit". He was, however, approved for absorption in the Indian Railway Service of Electrical Engineers with effect from 16.11.1983.

(ii) The General Manager, Northern Railway made a confidential reference to the Secretary, Railway Board on 1.01.1986 wherein it was stated inter alia that the case of the applicant for retention in service had been reviewed by the Review Committee and that the said Committee had recommended his premature retirement on account of his unsatisfactory performance. In the said letter, it is stated that the assessment in the Confidential Reports of the applicant for the period from 1978 to 1984 was graded as "Average" and for the year 1985 as "Below Average". The decision to retire him from service

was taken by the President in January 1987 in public interest after review of his entire record of service including his performance as reflected in his ACR for the year 1985-86.

(iii) There has been no violation of rules and orders laid down in regard to the retirement of Railway Officers under Rule 2046(h), as alleged by the applicant. The Review Committee submitted its recommendation in 1985 on which date he was about 55 years of age. He was found to be inefficient after his case was reviewed on the basis of his ACRs and after his service record was perused by the Members of the Railway Board and the assessment of the Railway Board was accepted by the Minister of State for Railways. The review of his services could not have been ~~alone~~ alone based on his ACR for the year 1985-86. The record of his service including the ACR for 1985-86 and his vigilance history were considered in the aforesaid review and the final decision arrived at was that he was on the whole an inefficient officer and that it was in public interest to retire him from service prematurely.

(iv) A decision in his case was taken bonafide and in strict accordance with the rules.

(v) There is no mandatory provision to retain a railway servant beyond the age of 50 years till his superannuation. A Railway Officer's case can be reviewed at any time on his attaining the age of 50 years or on completion of 30 years of service provided that he had entered Government

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service before attaining the age of 35 years.

(vi) The representation made by the applicant was duly considered by the Railway Board and it was decided to reject the same with the <sup>approval of</sup> ~~L~~ of the Minister of State for Railways.

5. We have carefully considered the rival contentions of both parties and have also gone through the records of the case. The learned counsel of both parties relied upon numerous rulings of the Supreme Court and of this Tribunal in support of their respective contentions. We do not consider it necessary to discuss them in detail as the legal position in regard to premature retirement in public interest is well settled. The appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. That authority should form the opinion bonafide. The opinion should not be formed or the decision should not be based on collateral grounds. It should not be an arbitrary decision. The power of judicial review in such a case is limited. Judicial review would apply only to the extent of examining whether the action taken by the respondents was strictly in conformity with the guidelines issued by the Government.

6. During the hearing, the learned counsel of the respondents was good enough to place before us the proceedings of the Review Committee, the decision taken

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by the Railway Board thereon and the minutes recorded by the Minister of State in the Ministry of Railways.

We have also been shown his ACRs for the period of his service. The applicant has been prematurely retired on the ground of ineffectiveness. According to the guidelines laid down by the Railway Board, Officers having 11 points or below are not to be retained in service. Those having over 11 points but less than 14 points shall comprise the 'grey area', while the performance record of all officers coming within the ambit of review is to be considered by the Board, the Officers having earned points within this bracket have to be viewed for compulsory retirement from the point of view of the assignments they have held during the last 5 years, whether in the field or sedentary job, like RDSO, COFMOW etc. and the number of reporting/reviewing officers who have observed the performance of the officer concerned. Officers having 14 and above points are to be retained in service unless the last three Annual CRs have a total of 6 points and below.

7. A perusal of the recommendation of the Review Committee indicates that the Committee has considered the question of retention or otherwise of the applicant in service in the light of the aforesaid guidelines. The Committee noted that for the years 1978 to 1984, he has been assessed as "Average", for the year 1985 as "Below Average" and for the year 1986 as "Very Good". The total points obtained by the applicant are 11.5

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which includes 4 points for 1986 Report in which he has been rated as 'Very Good' and 'Fit For Promotion'. His was a marginal case and it was suggested that the Railway Board may like to consider the same having regard to his entire record of service. It was also brought ~~out~~ <sup>in</sup> in the note of the Under Secretary dated 3.11.1986 that the applicant was awarded the major penalty of reduction in pay for a period of 3 months with cumulative effect in 1979 for misuse of Railway labour for private work. There had been no other vigilance case against him. The Under Secretary concerned submitted to the Board the case of the applicant for review.

8. The views expressed by the Joint Secretary concerned, the Secretary of the Railway Board, the Members of the Railway Board, the Financial Commissioner and the Chairman, Railway Board may be paraphrased as follows:-

Joint Secretary

He earned Average Reports for the years 1982, 1983 and 1984 while he was categorised as 'Below Average' for the year 1985. He has, however, earned 'Very Good' Report for the year 1986. Due to this vast improvement, his performance may be watched for the year. The position can be reviewed on receipt of his CR for the year March, 1987.

Secretary

His record of service is rather bad except for the year 1986 CR submitted after the recommendation to the Board. The officer scores 11.5 points taking account of 4 points obtained in 1986. It seems to be a clear case for retiring the officer.

M.S.

He has been shown on secret list in 1982 and 1983 Report. His CR of 1985 is really bad and shows his traits in performance. He should be retired.

M.M.

He has merely signed.

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M.T.

The case should have been put up after September, 1985 for his retirement. In last year DRM assessing him 'Very Good' will make the case weak.

M.E.

He endorsed the views of M.T.

F.C.

The Chief Electrical Engineer (-) had considered him unfit for promotion till 1983 (earlier reports) but now (1986) has certified him as 'Very Good' and fit. 1987 Report may be awaited though it has all along been pointing a bad case. He favoured a further discussion in the Board.

Chairman Railway Board

He agreed with the view of the Financial Commissioner that the matter merits discussion in the Board.

9. Accordingly, a memorandum was placed before the Railway Board to consider the matter further.

10. The Board at its meeting held on 7.1.1987 decided that the applicant should be prematurely retired under Rule 2046 on account of his poor record of service. The proposal was submitted to the Minister of State in the Ministry of Railways along with the detailed memorandum prepared for the Board meeting, the guidelines laid down by the Board in regard to such reviews and the ACR Dossier of the applicant. On 23.1.87, the Minister of State appended his signature to the proposal, signifying thereby that he has approved the proposal. Thereafter, the impugned order of premature retirement was passed by the respondents.

11. The applicant preferred an appeal on 13.2.87 against the impugned order of premature retirement. The points raised therein were considered by the Railway Board and it was

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decided to reject the appeal.

12. On a perusal of the relevant file of the respondents made available to us, we are satisfied that the Review Committee as well as the Competent Authority (i.e., the Minister of State for Railways) had applied their mind to the facts and circumstances of the case of the applicant before arriving at their decision. The individual views expressed by the Members of the Board in the notes recorded <sup>by</sup> ~~of~~ by them before the meeting of the Full Board, cannot be taken advantage of by the applicant. It only indicates application of mind fairly and independently. The Memorandum for the Board meetings sets out the relevant facts and circumstances of the case in a fair manner. It refers to the assessment as reflected in the applicant's ACR from 1978 to 1986 and the guidelines laid down by the Board. It refers to the records of the Vigilance Directorate of 1978. At the same time, it has been stated that "there has been/is no other vigilance case against him". To our mind, reference to the records of the Vigilance Directorate is appropriate, as the entire personal data of the employee should be placed before the Competent Authority to assist it in arriving at a decision.

13. The applicant has not raised the plea of malafides against the respondents. In a case of this kind where the decision has been arrived at bonafide, the Tribunal cannot sit in appeal over the judgment of the Competent Authority (vide Ved Prakash Vs. U.O.I., AIR 1988 SC 77; See also Jayanti Kumar Vs. U.O.I., AIR 1989 SC 72). Admittedly, the case of the applicant fell in the grey area where the total

points obtained by him was only 11.5 which also included 4 points for 1986 ACR in which he has been rated as "Very Good" and "Fit For Promotion".

14. We do not see any force in the contention of the applicant that the review of a case for retention or otherwise of a Government servant in service should strictly adhere to the time schedule laid down in the guidelines. The instructions in regard to the adherence to the time schedule are directory and not mandatory. Under Rule 2046(h), the appropriate authority has the absolute right to retire a Railway employee in public interest at any time after he has completed the requisite service laid down in the said Rule. Administrative instructions or guidelines cannot take away or whittle down that right.

15. We see no force in the contention of the applicant that he should have been considered for retention in the next lower grade in accordance with the relevant guidelines. The learned counsel of the respondents drew our attention to an amendment of Rule 2046(h) made in March, 1982 according to which a Railway servant who is in a Class III post or Service in a substantive capacity but is holding a Class I or Class II post or Service in an officiating capacity shall, in case it is decided to retire him from the Class I or Class II post or Service, in the public interest, be allowed on his request in writing to continue in the Service in the Class III post or Service which he holds in a substantive capacity. He contended that the applicant joined Class I post initially and as such, the question of allowing him to

continue in a lower post under the amended rules would not arise.

16. The applicant has contended that the appeal against the order of premature retirement was disposed of by a non-speaking order. It is true that no reasons have been given in the order passed by the respondents in June, 1987 rejecting his representation dated 13.2.1987. We have, however, gone through the relevant file of the respondents which clearly indicates that all the points raised by him have been examined by the Board and by the Competent Authority before rejecting the appeal. Thus, the authorities concerned had applied their mind before rejecting the appeal.

17. In the facts and circumstances of the case, we are of the opinion that the order of compulsory retirement of the applicant is not open to challenge. The application is, therefore, dismissed. The parties will bear their own costs.

*(Recd 29/10/89)*  
(P.C. JAIN)  
MEMBER (A)

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20/10/89*  
(P.K. KARTHA)  
VICE CHAIRMAN (J)