

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1694/87. 198
Tax No.

DATE OF DECISION 7-12-1989

Shri S.R. Sant Petitioner

Shri R.K. Kamal Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri R.S. Aggarwal Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *by*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to other Benches?

Banerji (Amitav Banerji
Chairman) *7/12/89*

11

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

DATE OF DECISION: 7-12-1989

REGN. NO. 1694/87

Sh. S.R. Sant Applicant.

Versus

Union of India & Ors. Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the Applicant. Shri R.K. Kamal, Counsel.

For the Respondents. Shri R.S. Aggarwal,
Counsel.

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman.)

This Application has been filed by Shri S.R. Sant, who held the post of Tax Assistant in the office of Income Tax, Agra immediately before his compulsory retirement from service. He had joined the service as a Lower Division Clerk on 7-11-1956 in the Department of Income Tax, Government of India, New Delhi. He was promoted as Tax Assistant on 15.7.1982 under the orders of Commissioner of Income Tax, Agra.

It will be evident from the above that he completed 30 years ~~of service~~ on 6.11.1986. It is also relevant to note his date of birth, which was 3.7.1932.

The applicant has also died on 4.4.1988. His legal representatives were brought on record vide order dated 19.9.1988 and it is they who are now contesting against the impugned order dated 23.3.1987 by which the respondent No. 2

retired the applicant prematurely under Rule 48 of the C.C.S. (Pension) Rules, 1972.

Several points were urged by learned counsel for the applicant but we think two of them are substantial for deciding this O.A. The applicant had been prematurely retired on the basis of adverse entries recorded in his A.C.Rs. for the years 1984-85 and 1985-86, against which representations had been filed and the order of compulsory retirement had been passed even before the representations had been considered and disposed of. The contention was that until the representation had been disposed of, the entries in those A.C.Rs. could not be taken into consideration for premature retirement. The second contention raised by the applicant was that the termination of his service has been effected under Rule 48 of the C.C.S. (Pension) Rules, 1972 on completion of 30 years of service, yet the requirement of holding of the Review three to four months earlier as given in Appendix 10 to the aforementioned Rules, was not complied with. The Reviewing Committee should have met in April to June 1986 and the notice could be given immediately after the completion of 30 years of service. In this case, it was urged that Screening Committee proceedings were completed on 27.11.86 and the Reviewing Committee met on 9.2.87.

We have heard learned counsel for the parties and we have also perused the Character Roll entries as well as proceedings of the Screening Committee and the Reviewing Committee from the official record kept in the Department.

13

We now take up the first point. We have seen the A.C.R. entries of the applicant from 1.4.1980 to 31.3.1986. 1980-81 entries are mostly 'very good' and in regard to integrity the entry is 'No Complaint'. General remarks are 'intelligent, willing and hard worker'. 1981-82 entries are mostly 'very good' entries and in regard to integrity, the entry is 'No complaint'. General remarks are 'He was Record keeper and his performance was good'. 1982-83 entries are mostly 'very good'. In regard to integrity, the entry is 'Nothing adverse has come to my knowledge' and the General remarks are 'He is a sincere, devoted and dependable worker'. 1983-84 entries contain all very good entries including integrity. General remarks read as follows:-

"He is sincere and hard worker. He is helpful to his office mates. His performance is very good."

1984-85 entries as given by the I.T.O.(J) contain five 'very good' and three 'good' entries. Relations with superiors are 'cordial' and other staff 'Very Good & Cordial'. Integrity was also certified by the Reporting Officer as 'So far as I know, he is an honest person'. In the General remarks, it is stated that 'as a Tax Assistant, his performance has been rated as 'Very Good' during the period'. However, it was not agreed upon by the Reviewing Officer who scored out several entries of the Reporting Officer and gave him the following entries:-

"The Reporting Officer has overassessed the qualities of this official. In many respects his work has been found to be inadequate. He has not taken enough interest in his work to justify the fixation of tax assistant that he held in the judicial section of the CIT's office. He mainly contented himself by doing work of a very minor and routine nature. His over all demeanour also needs to be improved by better and responsible behaviour."

The above entry was communicated to the applicant, who filed a representation and the note on the A.C.R. shows that the representation was rejected by the Board on 27.1.87. The Central Board of Direct Taxes rejected the representation on the ground that there is no merit on the points made out by the applicant.

The entries for 1985-86 are mostly 'Good' and in respect of figure work and timely submission of statements and accuracy in tax calculations, the entries are 'Inadequate' but in respect of punctuality, the entry was in his favour. His integrity was also certified as 'As far as I know, he is honest'. The General remark was that he was fit for general work. The Reviewing Officer remarked that in view of entries in Columns 12(ii), 13 and 17 in the A.C.R., the applicant was not even fit for doing general work. He rated him even lower as his performance was inadequate. This was communicated to the applicant and the official note by Inspecting Assistant Income-tax Officer, Range I, Agra, dated 8th September, 1986, the adverse entries were communicated to the official and he had six weeks' time to file a representation but he had not filed any representation even

15

till the date of the passing of the order. Hence a conclusion was drawn as no representation was made and the entries were being up-held and maintained in toto.

The applicant's contention was that he had submitted a representation on 28.7.86 (Annexure A-10). The adverse entries for the year 1985-86 were communicated to the applicant by letter dated 11.6.86 and only seven days were allowed to filing him for representation. Reference was made to Annexure A-9. The said communication gave him only seven days' time to file representation. The applicant states that he had addressed the representation to the Commissioner of Income-tax, Agra through proper channel on 28.7.86. He pointed out that instead of usual 45 days' time for making the representation, it had been reduced to seven days and it showed that something was prejudicial against him.

In their reply, the respondents have stated that the applicant did not file any representation within prescribed period. It was further stated that the applicant, however, filed a representation before the Commissioner of Income Tax, Agra when it was pointed out that the representation should have been filed before the Inspecting Assistant Commissioner of Income Tax, who had communicated the adverse entries to the applicant. The applicant did not ^{do} so, but again submitted it before Respondent No. 2 and insisted that he had correctly filed the representation before him. The reply further says that instead of taking any action, representation of the applicant was 'filed' by the Respondent No. 2. It is further stated in the said reply that-

"Shri Sudhakar Varma, IAC, Range-I, Agra has made a mention in the CCR from itself that adverse remarks were communicated to the petitioner vide letter dated 11.6.86 and a period of six weeks' was granted to the petitioner to make his representation. But no representation was received in his office till 8.9.86. Therefore, the adverse entries recorded in his CCR for the year 1985-86 were upheld and sustained in toto. This in fact is the rejection of the representation made by the petitioner for the year 1985-86."

A reference may be made to the ACR form and the entry by Shri Sudhakar Varma. A perusal of the ACR form for the year 1985-86 shows a writing by Shri Sudhakar Varma, IAC, dated 8.9.86 that the adverse entries were communicated by the office vide letter No. Misc./S.G/R1/Adverse entries/S.R.s/85-86/2012 to 2014 dated 11.6.86. A period of six weeks was granted to the official to make his representation. The above letter dated 11.6.86 (Annexure A-9) appears to be under the signature of Sudhakar Varma, I.A.C. of Income Tax, Range I, Agra. Last para of the letter reads as under:-

"The above adverse remarks are communicated to you so that if you may like to file a representation, you may submit the same within 7 days through proper channel."

Nothing has been said in the reply that the paper Annexure-A9 is not the correct copy of the letter sent by Shri Sudhakar Varma and that such a letter was not sent. It is, therefore, evident that only seven days' notice instead of 45 days' time was given.

Paragraph 6.9 of the Application has stated that time was extended on representation from the application and thereafter the applicant ~~had~~ submitted his representation dated 28.7.86

17

(Annexure A-10). A reply was received from the office of the Commissioner of Income Tax, Agra dated 3.12.86 indicating that the applicant should have filed his representation to the I.A.C., Range-I, Agra and not to the Commissioner, Income-tax, Agra. Consequently, the representation dated 28.7.86 was filed by the Commissioner, Income-tax, Agra without taking any action on the same. The applicant immediately thereafter filed a representation ^{to} the I.A.C., Range-I, Agra explaining the reason that the original representation was made to the Commissioner. The said representation is marked as Annexure A-11. In this representation to the I.A.C. (Assessment), Agra, it was stated that the adverse remarks were communicated to him by the I.A.C., Range-I, Agra being Reviewing Officer. Consequently, the representation was submitted to the Commissioner of Income-tax, Agra being superior authority and the same was valid and may be sympathetically considered. The applicant has stated in para 6.10 that the representation against 1984-85 A.C.R was rejected by the Central Board of Direct Taxes by a non-speaking order dated 13.2.87 and representation against the ACR 1985-86 entry was not even considered.

It is necessary to mention here that when the representation of the applicant was submitted through proper channel to the Commissioner, it was the duty of the office ^{of the Commissioner} of the Income-tax/to send the representation to the I.A.C. This has not been done. In the first place, Commissioner ordered that the representation/on the ground that it had to be filed before the I.A.C. This is obviously incorrect. It is nowhere mentioned in the letter of I.A.C. dated 11.6.86 (Annexure A-9)

that the representation had to be submitted or addressed to the I.A.C. The Commissioner's office should have sent the representation to the Reviewing Officer for his comments and for onward transmission to the I.A.C. This has not been done. The Commissioner's office 'filed' the representation and the I.A.C. drew an inference that as it has been 'filed', it meant that the adverse entries have been maintained. It appears to us that this is not a correct approach. If there is no representation at all against adverse entries in the A.C.R., it would be presumed that the employee has nothing further to say. In case he makes a representation, that representation must be dealt with in accordance with law. Merely because it was sent to a senior officer other than the Reviewing Officer or I.A.C., it does not mean that the Commissioner could order it to be 'filed', with the result that his representation remains undecided.

We are, therefore, of the view that representation had been made but not disposed of in accordance with law. Where a representation has been filed and remains pending and has not been disposed of, it is not permissible for the authorities to rely on the entries against which representation has been made. In a recent decision of the Supreme Court in Baidyanath Mahapatra Vs. State of Orissa (1989 (3) Judgements Today, Page 360), their Lordships laid down "it is settled view that it is not permissible to retire prematurely a Government servant on the basis of adverse entries, representations against which are not considered and disposed of". Reference was made to the case of Brij Mohan Chopra Vs. State of Punjab,

(1987(2) SCR 583). In the case of Baidyanath Mahapatra, their Lordships held that the Tribunal had taken a peculiar view in holding that since the representation had not been made before the date on which the Review Committee had considered the applicant's case, the Committee need not have waited for the disposal of the appellant's representation and it was free to take into account the adverse remarks awarded to the appellant in the years 1981-82 and 1982-83. Their Lordships also held that the applicant had a right to make representation within six months from the date of communication of the adverse remarks and the adverse entries could not be taken into account either by the Review Committee or by the State Government in forming the requisite opinion as contemplated by Rule 71(1)(a) of the Orissa Service Code, before the expiry of the period of six months. Their Lordships had further observed that the proper course for the Review Committee not to have considered those entries and in the alternative, the Review Committee should have awaited the decision on the appellant's representation.

In view of the above, the A.C.R. entries for 1985-86 could not be taken into consideration by the Review Committee ^{another} at all. There is an aspect of the matter, which is also significant.

We have seen the report of the Screening Committee also. It proceeds on the basis that / ^{the} applicant's integrity was doubtful since he had purchased two plots, had extensive landed property in two villages and had also purchased a Car benami, in the name of his son. These are matters, which have been placed on the ^{personal} files of the applicant. We have seen the

official records in the case. The particulars about integrity were first noticed by the Screening Committee chaired by Shri Sudhakar Varma, Chairman, I.A.C., Range-I, Agra and this meeting took place on 27.11.86. These remarks were not communicated to the applicant and he had no knowledge about it. The Screening Committee's conclusion was considered by the Reviewing Committee. Reviewing Committee took the view that for the reasons recorded by the Screening Committee, the official should be retired in public interest under Rule 48 of the C.C.S.(Pension) Rules 1972.

The question of doubtful of integrity and the applicant living beyond his means are matters which should not have been taken into consideration for premature retirement. If he was living beyond his means, a disciplinary proceeding should have been taken against him and he could have been even dismissed from service. It is well settled that compulsory retirement from service ~~cannot~~ proceed on the basis of adverse entries. Since there was no adverse entry in regard to integrity in the A.C.R from 1980 to 1986, the decision to retire him from service prematurely on the basis of doubtful ~~not~~ integrity in the minutes of Screening Committee recorded for the first time, was not at all maintainable.

We are, therefore, of the view that the respondent's decision to prematurely retire the applicant on the ground of lack of integrity and living beyond his known source of income was not maintainable unless there was an entry in the A.C.R. or that disciplinary proceedings had been initiated against him. The applicant had been condemned without affording him an opportunity to meet the charge of lack of integrity. We are, therefore, unable to sustain the decision to retire him prematurely.

Last point urged by the counsel is also worth consideration. Rule 48 of the CCS(Pension) Rules, 1972 speaks that at any time after a Government servant has completed thirty years' qualifying service, he may be required by the appointing authority to retire in public interest, and in ~~the~~ case of such retirement the Government servant shall be entitled to a retiring pension. In Appendix 10 to the C.C.C. (Pension) Rules, 1972, there are specific instructions regarding premature retirement of a Central Government servant. The relevant portion of the same is as under:-

"II. Criteria, Procedure and Guidelines: In order to ensure that the powers vested in the appropriate authority are exercised fairly and impartially and not arbitrarily, it has been decided to lay down the procedures and guidelines for reviewing the cases of Government employees covered under the various aforesaid rules as mentioned below:-

- (1) The case of Government servant covered by F.R. 56 (j) or Rule 48 of the C.C.C.(Pension) Rules, 1972 or C.S.R. 459 (h) should be reviewed six months before they attain the age of 50/55 years or complete 30 yrs service/30 years of qualifying service, whichever occurs earlier.
- (2) Committees shall be constituted in each Ministry/Department/Office, as shown in Annexure II, to which all such cases shall be referred to recommendation as to whether the Officer concerned should be retired from service in the public interest or whether he should be retained in service.
- (3) The criteria to be followed by the Committee in making their recommendations would be as follows:-
 - (a) Government employees whose integrity is doubtful, will be retired.
 - (b) Government employees, who are found to be ineffective will also be retired. The basic consideration in identifying such employee 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 had been previously promoted, should be considered.

(c) While the entire service record of the 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 satisfactory.

(d) No employee should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case.

IV. Time schedule for review: In order to ensure that the review is undertaken regularly and in due time Ministries/Departments are requested to maintain a suitable register (or registers) of employees under their control or who belong to cadres/services controlled by them, who are due to attain the age of 50/55 years or complete 30 years of service, as the case may be, and also to instruct their attached and subordinate offices to take similar action. This register should be scrutinised at the beginning of every quarter by a senior officer in the Ministry/Department and in attached and subordinate offices, and the review undertaken according to the following schedule:-

Quarter in which review is to be made	Cases of employees who will be attaining the age of 50/55 years or will be completing 30 years of service or 30 years of service qualifying for pension, as the case may be, in the quarter indicated below to be reviewed
1. January to March	July to September of the same year.
2. April to June	October to December of the same year.
3. July to September	January to March of the next year.
4. October to December	April to June of the next year.

Ministry of Finance, etc., are requested to bring the contents of this office Memo-Randum to the notice of all the officers concerned for their guidance and compliance.

This makes it clear that where an employee is to be prematurely retired, the Review Committee should meet at least six months before/attains the age of 50/55 years or completes 30 years service/or 30 years qualifying service. Secondly, the quarter in which the review is to be made is related to his completion of either 30 years of service/30 years of qualifying service or on attaining the age of 50/55 years. In the present case, the applicant completed 30 years of service on 6.11.86. Consequently, the case will come under item No. 2 "October to December of the same year." The quarter in which the Review is to be made is indicated against the above item in Column. No. 2 i.e., "April to June" of the same year, i.e., 1986.

In view of the above since the applicant had completed 30 years of service on 6.11.86, the Reviewing Committee should have met sometime in April to June, 1986. This was not done in the present case. The Reviewing Committee met on 9.2.87, i.e., after 3 months of completing 30 years service. We are of the view that the Respondents followed an erroneous procedure in the present case, which also impinges the order of compulsory retirement from service.

For the reasons indicated above, we are satisfied that this Application must be allowed and the impugned order dated 23.3.1987 retiring the applicant from service must be set aside. We order accordingly. We further direct that the applicant will be treated in service till 4.4.1988 when he died. We further direct that he will be entitled to be paid all arrears of pay and allowances etc., as well as retirement benefits and the same may be paid to the heirs within

2M

three months from the date of receipt of the copy of
the order.

There is no order as to costs.


(B.C. Mathur)
Vice-Chairman (A)


(Amitav Banerji)
Chairman

"SRD"