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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

O.A No. **157/1987.** 198
T.A. No.

DATE OF DECISION **05.10.90.**

Shri Sardul Singh Petitioner

Shri Ashok Aggarwal Advocate for the Petitioner (s)

Versus

Delhi Administration & Respondents
Another

Shri B.R. Prashar Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. **P.K. Kartha, Vice-Chairman(Judl.)**

The Hon'ble Mr. **D.K. Chakravarty, Member(A)**

JUDGMENT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(10)

Regn. No. OA-157/1987

Date of decision: 5-10-90

Shri Sardul Singh

... Applicant

Vs.

Delhi Administration & Another .. Respondents

ADVOCATES:

For the applicant

Shri Ashok Aggarwal,
Counsel.

For the respondents

Shri B.R. Prashar,
Counsel.

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman(J)

The Hon'ble Mr. D.K. Chakravorty, Member(A)

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. D.K. Chakravorty, Member(A))

The applicant, who has worked as an Inspector of Police in the office of the Commissioner of Police, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs :-

(a) To set aside and quash the impugned order of compulsory retirement at Annexure-I to the application.

(b) To declare that he was in continuous service and entitled to all consequential benefits including full back wages, seniority, promotion etc., and

O.A.157/87. (c) To restrain the respondents from dispossessing him from the Government accommodation at No.189, Police Colony, Hauz Khas, New Delhi.

2) The application was filed in the Tribunal on 05.2.87. While admitting the application on 12.2.1987, the Tribunal passed an interim order restraining the respondents from evicting the applicant from the quarter in his possession. The interim order has thereafter been made absolute.

3) The facts of the case in brief are as follows. The applicant was initially appointed in 1951 as Assistant Sub-Inspector of Police. In 1962, he was promoted as Sub-Inspector of Police and in 1972, he was promoted as Inspector of Police. He worked as Inspector of Police till he was prematurely retired from service by the impugned order on 1.8.86.

4) The applicant has contended that his work and conduct throughout his service had been unblemished, that the respondents allowed him to cross the Efficiency Bar w.e.f.1.8.80 in the scale of pay of Rs.550-900/- at the stage of Rs.750/- per month to Rs.780/- and that his name, which had figured in the list of officers of doubtful integrity, was

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O.A.157/87. removed from the said list and he was informed accordingly on 24.6.86.

5) The applicant has alleged that the impugned order of retirement has been issued at the instance of some interested and influential persons. He has challenged the impugned order of retirement on the ground that it suffers from the vice of non-application of mind and as being arbitrary.

6) The respondents have stated in their counter-affidavit that the applicant had been coming to adverse notice of his seniors time and again. He was prematurely retired Rule 48 of the C.S.S. (Pension) Rules, 1972 by the appropriate authority. According to them, he had been awarded as many as 15 censures for his lapses/misconduct during his 35 years service. His entire service record was considered before deciding to compulsorily retire him in public interest.

7) We have carefully gone through the records of the case and have considered the rival contentions. The impugned order is undated. It was received by the applicant on 1.8.86. It is a cyclostyled.

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● O.A.157/87. order in which the name of the applicant and the name of the appropriate authority have been inserted in the blanks. In our opinion, the mere fact that impugned order is in a standard form does not necessarily indicate that it suffers from the vice of non-application of mind.

8) The case of the applicant for continued retention in service or retirement in public interest under Rule 48 of the C.S.S.(Pension) Rules, 1972 was considered by the Review Committee at its meeting held on 31.7.86. During the hearing, the respondents produced before us a photo copy of the minutes of the Review Committee. The Review Committee considered the service record of the applicant and recommended that it is in public interest to retire him under Rule 48 of the C.S.S. (Pension) Rules, 1972.

9) The legal position in regard to compulsory retirement in public interest is well settled. The appropriate authority has the absolute right to retire a Govt. servant if it is of the opinion that it is in the public interest to do so. That authority should form the opinion ^{not} ~~benafide~~. The opinion should not be formed or the decision should ^{not} ~~be~~ based on

● O.A.157/87. collateral grounds. It should not be an arbitrary decision.

10) In Union of India and another Vs. Inderjit Rajput, 1989 (2 -SCALE) 1098 at 1100, the Supreme Court observed in a similar case as follows :

" The real question for decision by the Tribunal was : whether, the bonafides decision of the competent authority to compulsorily retire the respondents on the basis of its opinion formed on this material was liable to be set aside by it? It is in this perspective that the Tribunal had to consider and decide the matter. "

11) In our opinion, there is nothing on record to doubt the bonafides of the competent authority in arriving at the decision to compulsorily retire the applicant. The respondents have taken into account the entire service record of the applicant in coming to the conclusion that he should be compulsorily retired in public interest.

12) There is, however, another aspect of the matter. The Government have laid down the procedure and guidelines to be followed in dealing with cases of compulsory retirement (Vide Ministry of Home Affairs O.M. dated 5.1.78, reproduced in Swamy's

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B.A.157/87. Pension Compilation at Appendix 10). It has been laid

down therein that 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. In

case, the appropriate authority, after the relevant

review, comes to the conclusion that the officer

is not fit for being retained in the present post,

but could be retained in the next lower post

from which he was promoted, a notice in the prescribed

form should be served in such a case on the employee

retiring him from service in pursuance of the

provisions of the relevant rules. Simultaneously,

it may be explained to him in a covering letter that

his continuance in service beyond the age of 50/55 years

/or after the completion of 30

years of service, as the case may be, could be

considered, if he is willing to revert to the lower

post held by him previously. In case he indicates

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O.A.157/87. his willingness to work in the lower post/for being
as reverted, he may be retained in service and
continued in the lower post.

13) In the instant case, the appropriate authority did not follow the aforesaid procedure and guidelines.

14) The applicant has stated that his date of birth is 5.11.31. He would have retired from service on attaining the age of superannuation on 30.11.89, had he continued in service.

15) In the conspectus of the facts and circumstances of the case, we held that the impugned order of compulsory retirement is not legally sustainable. We, therefore, set aside and quash the same. The respondents are directed to consider the case of the applicant for retention in service in the lower post of Sub-Inspector of Police w.e.f. 1.8.86. In case they come to the conclusion that he could be retained in the next lower post of Sub-

Inspector of Police, they shall pass an order to the effect that he was deemed to be reverted from the post of Inspector to that of Sub-Inspector of Police w.e.f. 1.8.86. The applicant would also be entitled to/consequential benefits including arrears of

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salary and allowances from 1.8.86 till the date on which he would have retired on attaining the age of superannuation. In the interest of justice and equity, we further direct that the pension and other retirement benefits given to the applicant should not be revised to his disadvantage consequent upon such order of reversion from the post of Inspector to that of Sub-Inspector of Police.

16. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order. The interim order passed on 12.2.87 restraining the respondents from evicting the applicant from the quarter in his possession will continue in force till then.

There will be no order as to costs.

D.Chakravorty
(D.K.CHAKRAVORTY)
MEMBER

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Partha
5/10/90
(P.K.KARTHA)
VICE CHAIRMAN