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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

DATE OF DECISION: 8.7.1988

Regn. No. O.A. No. 1747/87.

Shri Raj Kumar Sharma ... Applicant.

Vs.

Union of India & Ors. ... Respondents.

CORAM:

Hon'ble Mr. P.K. Kartha, Vice-Chairman.

Hon'ble Mr. S.P. Mukerji, Administrative Member.

For the applicant: Shri Sant Lal, Advocate.

For the respondents: Shri P.P. Khurana, Advocate.

JUDGMENT
(delivered by Hon'ble Shri S.P. Mukerji, AM).

The applicant, who has been working as Postal Assistant in the lower selection grade (LSG) and compulsorily retired in the public interest by the impugned order dated 11.8.1987 with effect from 25.12.1987, under F.R. 56(j), has moved this application dated 1st December, 1987 under Section 19 of the Administrative Tribunals Act, 1985, praying that the said impugned order be quashed and the respondents be directed to take him back in service with all consequential benefits.

2. The brief facts of the case are as follows.

The applicant joined service in the P & T Department

in 1951. He was promoted to the L.S.G. of Postal Assistant through the D.P.C. with effect from 30.11.1983. He was further promoted to the supervisory scale of L.S.G. with a special allowance of Rs. 35/- per month in February, 1987 with effect from 30.4.1987. Within a few months of this promotion, the impugned order dated 11.8.1987 was passed for his premature retirement under F.R. 56(j) to take effect from 25.12.1987. The applicant's plea is that his case for continuance in service was considered under Rule 48 of the Central Civil Services (Pension) Rules, 1972 in 1981 when he had completed 30 years of service and, therefore, his case could not be reviewed again under F.R. 56(j), in accordance with the guidelines issued by the Government. He admits that he had been censured twice on 18.4.1985 and 3.2.1987 and was punished for filing a wrong L.T.C. claim for which his increments were withheld by the order dated 31.3.1982. According to him, since he was promoted to L.S.G. grade on 30.11.1983, the punishment of 1982 being prior to his promotion cannot be taken into account for premature retirement. Similarly, the censures of 1985 and February, 1987, according to him, are washed away by his promotion as supervisor, LSG on 13.2.1987 effective from 30.4.1987. In accordance with the respondents, the promotion has nothing to do with premature retirement and since the High Powered Committee recommended that he is not fit to be retained in service, and as his representation was

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rejected by the Representation Committee, the applicant cannot claim reinstatement by quashing of the order of premature retirement.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We are not impressed by the argument of the learned counsel for the applicant that in accordance with the administrative instructions, review both under rule 48 of the CCS (Pension) Rules and under F.R. 56(j) cannot take place. These reviews are in accordance with the statutory rules and the administrative instructions cannot take away the obligation cast by these statutory rules. The administrative instructions can fill up the gap in the statutory rules, and if there is any conflict between the administrative instructions and the statutory rules, the statutory rules will prevail. Rule 48 of the CCS (Pension) Rules enjoins review of performance after completion of 30 years of service while F.R. 56(j) enjoins such review on the attainment of 55 years of age. Since these two events generally occur at two different points of time, in the absence of any specific prohibition, one review is not exclusive of the other.

4. So far as the merits of the case are concerned, it is admitted that the applicant was promoted to the L.S.G. in November, 1983 whereas he was punished for filing a fraudulent LTC claim on 31.3.1982. The learned counsel for the applicant has drawn our attention to the ruling of the Supreme Court in Brijmohan Singh Chopra Vs. State of Punjab, ATR 1987(1) SC 513,

in accordance with which, adverse entries prior to one's promotion to a higher grade would not be taken into account for the purposes of premature retirement. According to the learned counsel, the punishment for the delinquency of the applicant being prior to his promotion, could not be taken into account for premature retirement. We are not impressed by this argument. The ruling of the Supreme Court is in relation to adverse entries recorded prior to one's promotion. This ruling, to our mind, cannot be invoked for obliterating the lapses on the part of an employee involving lack of integrity, grave misdemeanour etc. which have been visited with punishment consequent upon disciplinary proceedings. The High Powered Committee could not, therefore, be expected to ignore the fact of the punishment awarded to the applicant in 1982 merely because he was promoted to the L.S.G. in 1983. So far as the applicant's promotion as supervisor in April, 1987 is concerned, the respondents have stated that no DPC is required for appointment of an LSG Postal Assistant as Supervisor with a special allowance of Rs. 35/- per month. In this connection, the clarificatory letter of 2.6.1986 from the Department of Posts states as follows:-

"No DPC is required to be constituted for selection of LSG officials as LSG supervisors because the selection does not involve promotion but selection in a post of same pay scale but carrying a special allowance of Rs. 35/- per month only."

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It was further clarified that "selection of LSG officials against supervisory posts will be decided on the basis of seniority in the P.S./S.S. cadre. So the senior-most LSG officials in a Division will be posted as supervisors".

5. In view of the above, we do not see any insuperable difficulty in rejecting the plea of the learned counsel for the applicant that the applicant's appointment as LSG Supervisor in April, 1987 acts as an estoppel against the respondents for retiring the applicant prematurely. This only shows that there was no malafides or victimisation against the applicant who, in spite of the censures and punishment awarded to him, was given the supervisory post in accordance with his seniority in April, 1987.

6. We have gone through the Confidential reports of the applicant to ascertain whether there was any adverse entry not communicated to the applicant on the basis of which the High Powered Committee might have made the recommendation to retire him prematurely. We find that there was no adverse entry as such but his general performance had mostly been adjudged to be average.

7. The applicant, according to his own statement, had completed 36 years of service and, accordingly, he must have been entitled to full pension on his premature retirement. Since the High Powered Committee and the

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Representation Committee, consisting of senior responsible officers, had come to the conclusion that it will be in the public interest to retire the applicant prematurely, we see no reason to question their judgment in the facts and circumstances brought out before us. The application is rejected.

There will be no order as to costs.


(S.P. Mukerji)
Administrative Member.


(P.K. Kartha)
Vice-Chairman.