

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI

OA
Regn. No. 1831/87

Date: 13-7-1989

Shri Moti Singh .. Applicant

Vs.

Union of India and others .. Respondents

For Applicant .. Shri Sital A.K. Dar
Advocate

For Respondents .. Shri Mukul Talwar,
Advocate

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman
and
Hon'ble Smt. J. Anjani Dayanand, Member (AM)

(Judgment of the Bench delivered by the Hon'ble
Smt. J. Anjani Dayanand)

who

The applicant/was an Inspector of Police,
No. D-1358, Delhi Police, Delhi, ^{has} approached the Tribunal
to treat the impugned order dated Nil of the Additional
Commissioner of Police (AP), Delhi received by the
applicant on 26-8-1987 retiring the applicant prematurely
from service ^{under FR 56 J(1)} (Annexure 10), and confirmed by the Impugned
Order of the Commissioner of Police dated 20-10-1987
(Annexure 12) illegal, ultravires, without jurisdiction
and authority, and a nullity in the eyes of law, and
consequently to quash the same and grant him all
consequential benefits.

The case was argued by the learned counsel
for the applicant on the following grounds.

AD Firstly that this case was ^{squarely} fairly covered
by the order of the Central Administrative Tribunal,
Principal Bench in T.A. 1242/85 and 1248/85 dated
11-9-1987 in which it was held that the "impugned orders
of compulsory retirement were not passed by the competent
authorities in exercise of their independent judgment

and discretion and are vitiated by the influential recommendations of their superior authority, i.e. Commissioner of Police, conveyed through the Review Committee chaired by the latter*.

Secondly, it was argued that Annexure 10 whereby the applicant was prematurely retired, is a cyclostyled undated order issued under the authority of the Review Committee of which the Commissioner of Police was the Chairman and the Additional Commissioner of Police (AP), Delhi being an authority subordinate to the Commissioner of Police, could not possibly apply his mind as to whether the recommendations of the Review Committee were in order or not before passing the said order.

Thirdly the learned counsel also invited our attention to Annexure 9 purported to be the true copy of the Press Report in Mahanagar dated 28th August, 1987, one day before the undated order of premature retirement was served on the applicant.

Further the learned counsel for the applicant also invited our attention to Annexures 1 to 7 in support of the good record of service of the applicant which had been commended by the Department by grant of certificates, cash awards, etc.

It was, therefore, obvious, he stated, that the appropriate authority had not applied its mind while passing the impugned order prematurely retiring the applicant. He reiterated that the facts and circumstances in this case were similar to those in TAs. 1242/85 and 1248/85 in which the Tribunal had set aside the impugned orders of compulsory retirement.

He also stated that the SLP filed by the Department ^{in New T.S.} against the order of the Tribunal had also been dismissed by the Supreme Court.

The learned counsel for the respondents argued the case on the ground that there was difference between the earlier cases and this case, in that there was a Screening Committee consisting of D.Cs.P. which screened the cases of those ^{to be} prematurely retired, and this list was placed before the Review Committee of which the Commissioner of Police was the Chairman for final recommendation. He argued that the Review Committee's findings were only recommendatory and that it would not be proper to state that the appropriate authority i.e. the Additional Commissioner of Police had not applied his mind while passing the impugned order. He ^{the} made available the files relating to deliberations of the Screening Committee consisting of the three D.Cs.P. as also the minutes of the Review Committee.

We have very carefully perused the papers placed before us relating to the Screening Committee and the minutes of the Review Committee as also the decision taken by the appropriate authority in issuing the impugned order prematurely retiring the applicant. We are satisfied that while ordering the premature retirement of the applicant, the instructions issued by the Government of India, Ministry of Home Affairs in Office Memorandum No. 25013/14/77-Estt.(A) dated the 5th January, 1978, have not been followed. The criteria, procedure and the guide-lines to be followed

by the appropriate authority in passing the order under Rule 56(j) have been very clearly laid down. As per the criteria, while the entire service record of an 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 five years' period, his service in the higher post, has been found satisfactory. It is noticed that while reviewing the record of service of the applicant, the preceding five years of his service have not been kept in view. It is also further noticed that the Home Ministry's Office Memorandum cited *in (supra)* had clearly laid down that the appropriate ^{auth} authority shall in every case, where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule, ~~the appropriate~~ authority should record in the file that it has formed its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule in the public interest. It is noticed from the records that there has been no application of mind by the appropriate authority before passing the order of prematurely retiring the applicant. In fact the impugned order does not even state that it has taken into account the Review Committee's recommendations and has satisfied

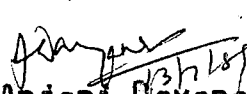
itself on the basis of the record of service of the officer that it is necessary to retire him from service.


In the facts and circumstances of the case and in view of the fatal flaws noticed in the impugned orders of compulsory retirement of the applicant, we allow the application and set aside the impugned order dated Nil of the Additional Commissioner of Police (AP) served on the applicant on 26.8.1987 and the Order of the Appellate Authority dated 20.10.1987.

The respondents are directed to reinstate the applicant in service with effect from the date of his compulsory retirement with all consequential benefits including arrears of pay and seniority.

The respondents are also directed to implement this order within 60 days from the date of receipt of this order.

In the circumstances of this case, there will be no order as to costs.


(Mrs. J. Anjani Dayanand)
Member (AM)
13.7.1989.


(Amitav Banerji)
Chairman.
13.7.1989.