

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1937
T.A. No.

198 7.

DATE OF DECISION July 13, 1989.

Shri Hoshiar Singh

Petitioner

In person.

Advocate for the Petitioner(s)

Versus

The Secretary to Govt., Ministry Respondents
of Defence (Production) New Delhi
and 2 others.

Shri R.M.Bagai, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mrs. J.Anjani Dayanand, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Y.
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. Whether it needs to be circulated to other Benches of the Tribunal? NO

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.1937/1987.

Date of decision: July 13, 1989.

Shri Hoshiar Singh

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Applicant.

Vs.

The Secretary to Government,
Ministry of Defence (Production)
New Delhi & 2 others.

Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mrs. J. Anjani Dayanand, Member (A).

For the applicant ...

In person.

For the respondents ...

Shri R.M. Bagai, counsel.

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

The applicant, Hoshiar Singh has filed Original Application No.569/1987 before the Central Administrative Tribunal, Madras Bench under Section 19 of the Administrative Tribunals Act, 1985, and subsequently the case was transferred to the Principal Bench on an application made by the applicant under Section 25 of the Act.

The applicant is aggrieved by Order No.7961/Vig. dated 29.6.1987, wherein he was informed that he would be retired from service on the expiry of three months from the date of service of the above order issued by the General Manager, Ordnance Factory, Tiruchirapalli. The above Notice/Order was issued under Art.459 (h) of the Civil Service Regulations. It was stated in the Notice/Order that the applicant was being retired prematurely in public interest.

The applicant's case is that the order retiring him compulsorily before his due date of superannuation was

(A)

bad in law and violative of Articles 14,16 and 311(2) of the Constitution of India. The applicant has stated that according to Rule 48 of the CCS(Pension)Rules,1972 and Instructions regarding premature retirement, the employee who had attained the age of 50/55 years or had rendered 30 years of service or 30 years qualifying service which ever occurs earlier and the case had to be reviewed by the Review Committee at least six months before the date of retirement. The applicant's case is that the present case was not reviewed by the Review Committee nor a Committee was constituted nor a decision was taken by the Review Committee prior to the applicant attaining the age of 55 years. The applicant attained the age of 55 years on 4.5.1987. As the respondents had not followed the guidelines and procedure adopted for premature retirement, the order of compulsorily retirement was illegal and violative of the rules.

viz.

His further case was that the third respondent / the General Manager, Ordnance Factory could not invoke Article 459 (h) of C.S.R. as there was no public interest involved in the present case. His further case was that this was mala fide exercise of power on the part of the 3rd respondent. The General Manager was prejudiced due to various petitions given by the applicant to the authorities about the misdeeds.

The applicant has, therefore, prayed to set aside the retirement Notice issued by the 3rd respondent. He further sought an interim relief that the operation of the retirement notice may be stayed. It may be stated here that

no interim relief was granted by the Bench hearing the matter for admission at Madras.

We have heard the applicant in person and Shri R.M.Baga learned counsel for the respondents at length. The first question to be considered is about mala fides against the 3rd respondent. In paragraph 4 of the Application, the applicant has stated that the General Manager, Ordnance Factory had issued the impugned order with mala fide intention. He had given instances in the said paragraph to show prejudice against the applicant. The first was the transfer of the applicant to Ordnance Factory, Trichy from Small Arms Factory, Kanpur by order dated 16.12.1982. As per the said order the applicant had to join the new station on 1.1.1983 but due to illness, he could not join duty and the same was communicate to the 3rd respondent by letters dated 10.1.1983, 15.2.1983 and 4.4.1983. The applicant thereafter reported for duty on 13.4.1983. A chargesheet was issued under Rule 14 of the C.C.S. (CCA) Rules, 1965 and enquiry was held. Ultimately, the applicant was not found guilty by the Inquiry Officer. This, according to the applicant was an instance where the General Manager had issued the chargesheet with mala fide intention.

The second ground is that he was active Trade Union Member. He was General Secretary of Ordnance Factory Employees Union till February, 1987, continuously for a period of nearly three years. For the Works Committee Election for the year

1985, the applicant's nomination was rejected and the applicant challenged the same in a Suit. The applicant states that he had pointed out the lapses of the administration on various occasions. This irked the management and resulted in making wrong entries in his annual confidential report for the year 1985. The said entries were made without notice to the applicant. He was informed after a lapse of four months. The applicant preferred a petition stating that the entries should be expunged. The Director General of Ordnance Factory rejected the petition. According to the applicant, this was due to the mala fide attitude of the General Manager.

Thirdly, the applicant states that the impugned order was passed with mala fide motives and with prejudice. The General Manager, respondent No.3 had misused his power in passing the order.

Burden of establishing mala fide lies heavily on the person who alleges it. Court would be slow to draw dubious inference from incomplete facts when imputations are grave and made against a person having a high responsibility. see E.P. ROYAPPA Vs. STATE OF TAMIL NADU- 1974(1)SLR 497 SC Another aspect is that mala fide has to be specifically pleaded and a strong foundation of fact is necessary.

The allegations to which we have made a reference above is directed against the General Manager, Ordnance Factory, Respondent No.3. The name of the officer, who was General Manager during the relevant period has not been disclosed in the array of parties. He should have been arrayed as a party by name. It was necessary so that the impleaded party could give a reply to the allegations.

(b)

In the case of B.B. DUTTA Vs. UNION OF INDIA

(1972 SIR 731) a similar question came up and the Delhi High Court took the view:

"If allegations are made of mala fide against a person, he must be impleaded in a writ petition so as to give him an opportunity to give a reply to the allegations of mala fide".

Whoever was holding the post of General Manager at that time should have been impleaded by name and given an opportunity to reply to the allegations. This has not been done in the present case. According to the judgment in the case of B.B.DUTTA (supra), strictly speaking, the applicant could not be permitted to urge this ground.

Even the allegations of mala fides lack detail. The allegation is that the General Manager had exercised his power mala fide in effecting the transfer from Ordnance Factory, Kanpur to Ordnance Factory, Trichy. The order of transfer of the applicant from Kanpur to Trichy was not made by respondent No.3. It was made under the orders of Director General/Chairman, Ordnance Factories. The actual order of transfer was signed by Officer-In-Ty. Charge dated 16.12.1982 under the authority of the Director General/Chairman, Ordnance Factories vide O.F.B. No.111/Transfer/A/NI dated 24.11.1982. That order shows that it was a transfer of permanent nature and had been ordered in the public interest. Consequently, the allegation made by the applicant that the General Manager had exercised his power mala fide in effecting the transfer from Kanpur to Trichy is wholly wrong.

jv

The second instance pointed out by the applicant that he could not immediately join duty at Trichy and had sent three letters dated 10.1.1983, 15.2.1983 and 4.4.1983 to the General Manager, Ordnance Factory, Trichy. He had thereafter reported for duty on 13.4.1983. The allegation of the applicant is that a chargesheet was issued under Rule 14 of the C.C.S. (CCA) Rules, 1965. The applicant's allegation is that this was a clear case where the General Manager issued the chargesheet with mala fide intention. The General Manager had appointed an Enquiry Officer ^{vide order dated 9.6.1983} to enquire into the charges framed against Shri Hoshiar Singh for non-compliance of orders of higher authorities and unauthorised absence from duty without prior sanction of leave. The Enquiry Officer came to the conclusion that the applicant could not be said to be guilty of charge of non-compliance of order of higher authority and charges of misconduct and misbehaviour. When the matter was submitted, the officer incharge in the Ministry of Defence, Ordnance Factory, Trichy reported that after perusal of the enquiry report, it was revealed that unauthorised absence from duty without prior sanction of leave stood clearly established. Two letters dated 15.2.1983 and 4.4.1983 sent by Shri Hoshiar Singh were received by the Ordnance Factory but no proper medical unfitness certificates indicating clearly the leave required by him had been enclosed with them and hence they had not been taken as valid documents. The letter dated 10.1.1983 had not been received by the Ordnance Factory nor Shri Hoshiar

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Singh was able to produce a copy of the aforesaid letter. He concluded that his absence from duty after availing the joining time remains unauthorised. He, therefore, imposed the penalty of "Censure" on Shri Hoshiar Singh vide order dated 15.2.1986. A perusal of this order and the proceedings would show that the applicant was absent from duty. He was to join the duty on 1.1.1983 but there was no indication of any letter or medical certificate in the whole month of January, 1983. Letter dated 15.2.1983 and 4.4.83 were received but not that of 10th January, 1983. The absence from duty without any indication or reasons would certainly entitle the third respondent to initiate an enquiry into the matter. Consequently, the act of initiating an enquiry should not be said to be mala fide. The officer was only doing his duty. Whatever be the result of enquiry, that would not vitiate the initiation of the enquiry unless it was held that the enquiry proceedings were ab initio void.

The next enquiry that had been started was for his gross misconduct viz. (i) leaving duty spot unauthorisedly during duty hours, (ii) taking active part in a demonstration in which the participants indulged in shouting, hooting etc. in front of GM's office during working hours inside the factory in contravention of standing Instructions and Conduct Rules and (iii) making provocative speech and inciting violence inside the factory. Action against the applicant had been initiated by the General Manager under Rule 16 of CCS (CCA)Rules, 1965 vide Memorandum dated 3.12.1986. The

applicant made representation dated 11.12.1986 to the General Manager, Ordnance Factory, Trichy. The General Manager, Ordnance Factory after considering the case and representation of the applicant imposed the penalty of stoppage of his next increment, when due, for one year without cumulative effect. - vide order No. 7930/ VIG/ 130 dated February 18, 1987. An appeal was filed by the applicant. That was dismissed by the Deputy Director/Vig. , Ordnance Factory Board by order dated 25.5.1987.

The earlier order dated 18.2.1987 passed by the General Manager had been approved by the Deputy Director/VIG exercising the power of the Director General. The question of mala fides does not enter into the question as the charges had been found well established.

It is no doubt true that the applicant was an active Member of the Trade Union and he was also General Secretary of Ordnance Factory Employees Union. It is also true that he had made a number of representations and he has alleged misdeeds by certain authorities in the matter of material supply or in the use of staff cars and other vehicles. It was urged during the argument that it was because of these activities the General Manager was biased against him and took the action including the action for his compulsory retirement.

The bias is usually associated with the act of a person acting without bona fide or acting with malice. The malice has to be against a person i.e. an individual. When such a charge is made, it is incumbent on the applicant to implead that person so that he may give a reply. As seen

earlier the person who was acting as the General Manager was not impleaded as a party ^{by name} and consequently, he has not been afforded an opportunity to reply to the allegations or malice or mala fides.

Consequently, the charge of mala fides in the present case fails on the above grounds.

dated 29.6.1987

We may now come to the order ~~of~~ compulsorily retiring the applicant. The applicant challenges the above order on the ground that it had been passed without appointing a Review Committee. This charge has been squarely refuted by Shri S.M.S.Sundaram, Officer-in-Ty-Charge, Ordnance Factory, Trichy in the counter submitted on behalf of the respondents. In the counter it is clearly stated that in accordance with Rule 48 of Central Civil Services (Pension) Rules, 1972, Government of India O.M.No.25013/14/77-Estt.(A) dated 5th January, 1978 and Ordnance Factory Board No.307/Review/A/A dated 28th January, 1986, the case was reviewed by the duly constituted Review Committee comprising of General Manager, Joint General Manager and Works Manager/Administration of the Ordnance Factory. The Committee met on 19th December, 1986 and reviewed cases of 3 individuals and recommended 2 cases for retention in service and one case, i.e. Shri Hoshiar Singh's case was recommended for premature retirement. Time schedule for review has been given in O.M. dated 5th January, 1978. There is no rejoinder filed in the present case to challenge any of these assertions in paragraph 5 of the counter. Consequently, the facts stated in this paragraph will have to be accepted. Hence the allegation that

the case of the applicant was not reviewed by the Review Committee prior to his attaining the age of 55 years was not correct.

The applicant's further contention was that the respondents had not followed the guidelines and procedure adopted for retiring him prematurely. The respondents have denied this allegation and stated in the counter that they have followed all the procedures on the subject, before issuing the notice in question to the applicant. The recommendations of the Committee was got approved from the higher authorities also before issue of orders. These assertions also have not been controverted by any rejoinder.

In fact the material on the record shows that proceedings for compulsorily retiring the applicant had been initiated much before the applicant attained the age of 55 years on 4.5.1987. The notice dated 29.6.1987 was issued after the Review Committee had made its recommendations and had been approved by the higher authorities. During the course of argument, the applicant raised an argument that once a person reaches the age of 55 years, no action can be taken against him for compulsorily retiring from service. This argument could not be supported on the basis of any statute or rules. Reference may be made to F.R. 56 (j) where it is laid down:

"Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice;

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- (i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity, or in a Group 'C' post or service in a substantive capacity, but officiating in a Group 'A' or Group 'B' post or service and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;
- (ii) in any other case after he has attained the age of fifty-five years: "

Admittedly, the applicant was U.D.C. i.e. in Group 'C' post. If he had entered government service before attaining the age of 35 years, he could be compulsorily retired in public interest after he had attained ^{the} age of 50 years and in any other case after he had attained the age of 55 years.

In the criteria Procedure and Guidelines contained in Instructions regarding premature retirement, it is laid down in Rule 48 of the CCS(Pension)Rules,1972 that 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.

This situation does not arise in the case of the applicant, for he would attain the age of 58 years in May,1990. Our attention has not been drawn to any rule which says that a person cannot be retired after attaining the age of 55 years. There is a settled procedure regarding premature retirement.

Under the Head 'Criteria Procedure and Guidelines' in Instructions regarding premature retirement under Rule 48 of the CCS(Pension)Rules,1972 or CSR 459(h) which lays down

that the cases of Government servants covered by FR 56(j) or (1) or Rule 48 of the CCS(Pension)Rules,1972 or CSR 459(h) should be reviewed six months before they attain the age of 50/55 years or complete 30 years service/30 years of qualifying service, whichever occurs earlier. This has been complied with in the present case.

Another guideline is that the appropriate authority shall take further action on the recommendations of the Committee. In every case, where it is proposed to retire a government servant in exercise of the powers conferred by the said rule(s), 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(s) in the public interest.

The Supreme Court in the case of UNION OF INDIA Vs. COL. J.N. SINHA(1970 SLR 748) has observed that:

"the appropriate authority should bonafide form an opinion that it is in public interest to retire the officer in exercise of the powers conferred by that provision and this decision should not be an arbitrary decision or should not be based on collateral grounds."

The impugned order dated 29.6.1987 reads as follows:-

" No.7961/VIG
Government of India, Ministry of
Defence, Ordnance Factory,
TIRUCHIRAPALLI-620016.

29th June,1987.

ORDER

WHEREAS the General Manager, Ordnance Factory, Tiruchirapalli, is of the opinion that it is in the public interest to do so:
NOW, THEREFORE, in exercise of the powers conferred by Art.459(h) of Civil Service

Regulations, the General Manager, Ordnance Factory, Tiruchirapalli hereby gives notice to Shri Hoshiar Singh, Upper Division Clerk, Ordnance Factory, Tiruchirapalli, that, he having already attained the age of fifty five years on the 4th May 1987, shall retire from service on the forenoon of the day following the date of expiry of three months computed from the date of following the date of service of this notice on him.

Sd/- (S. MANAGALAN)
GENERAL MANAGER

To

Shri Hoshiar Singh,
Upper Division Clerk,
Material Control Office,
Ordnance Factory,
Tiruchirapalli-620016. Thro: DGM/P&MM and WM/MM.

This Order clearly shows that the General Manager, Ordnance Factory had formed the opinion that it was in the public interest to do so. Therefore, there is a compliance with the required rule.

Another plea raised ^{was} that the rules relating to premature retirement should not be used to retire a government servant on grounds of specific acts of misconduct, as a short-cut to initiating formal disciplinary proceedings.

A perusal of the material on the record shows that the order was not passed merely on the basis of any one specific instance of misconduct or mis-behaviour but it was formed on the basis of a chain of events. Reference may be made to the counter affidavit. There were following adverse entries in the Annual Confidential Report for the period from 1.1.1985 to 31.12.1985:

7. Reliability	Unreliable
10. Self reliance	Irresolute.
12. Sobriety	Intemperate.

The applicant represented against the adverse entries

but the same was rejected after consideration by the Appellate Authority.

In the case of BALDEV RAJ CHADHA Vs. UNION OF INDIA AND OTHERS (1980(3)SLR 1), Supreme Court observed:

(on P 4):

"The order to retire must be passed only by 'the appropriate authority'. That authority must form the requisite opinion not subjective satisfaction but objective and bona fide and based on relevant material. The requisite opinion is that the retirement of the victim is 'in public interest' not personal, political or other interest but solely governed by the interest of public service."

The applicant raised another argument that he was being victimised. That he has made complaints in regard to certain acts in the Ordnance Factory and blamed the management of the Factory for the same. He urged that these were all true matters and he had proof of the same. On being asked to cite the nature of proof, all that he could point out was to his various complaints made to the management. The complaints would not form the evidence to show that there was either misappropriation or illegalities and irregularities in the supply of goods or the maintenance of the motor vehicles or staff cars. We are satisfied that none of these can form the basis of any evidence against the management.

We are further of the view that in order to succeed he would have to show that the order was not in public ^{interest} ~~interest~~ and was mala fide. We are not satisfied that the applicant

has been able to make out a case for interference, i.e., for the quashing of the Notice/Order dated 29.6.1987. The applicant's case had proceeded in accordance with law and the order passed against him, in our opinion, does not suffer from any illegality. In the result, therefore, the Original Application must fail and it is hereby dismissed. However, in the circumstances of the case, we make no order as to costs.

Dayani
(J. Anjani Dayanand)
Member (A)
13.7.1989.

AB
(Amitav Banerji)
Chairman
13.7.1989.

SKS.