

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 23  
T.A. No.

198 7.

DATE OF DECISION May 22, 1990.

shri C.C. Dutta

Petitioner

Shri G.D. Gupta

Advocate for the Petitioner(s)

Versus

Union of India & Another

Respondent(s)

Shri N.S. Mehta

Advocate for the Respondent(s)

CORAM.

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

The Hon'ble Mr. M.M. Mathur, Member (A)

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

MGIPRRND-12 CAT/R6-3-12-86-15,000

  
(Amitav Banerji)  
Chairman

7

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
DELHI.

O.A. No.23/1987.

Date of decision: May 22, 1990.

Shri C.C. Dutta ....

Applicant.

Vs.

Union of India & Another ...

Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. M.M. Mathur, Member (A).

For the applicant ...

Shri G.D. Gupta, Counsel

For the respondents ...

Shri N.S. Mehta, Sr.  
Standing Counsel.

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

Shri C.C. Dutta, the applicant has filed this  
Original Application (OA) under Section 19 of the  
Administrative Tribunals Act, 1985 (hereinafter referred to  
as 'the Act') against the order dated 30.12.1986 compulsorily  
retiring him under FR 56 (j).

The applicant was Director of Supplies in the  
D.G. S & D, New Delhi when the above order was passed.  
He was also sent a cheque of the amount equivalent to  
the amount of his pay plus allowances for a period of three  
months with the aforesaid order dated 30.12.1986.

The applicant had joined service as Professional  
Assistant in the India Metrological Department, Government  
of India in September, 1950. The aforesaid appointment  
was made on the basis of the selection by UPSC. He worked  
in the said post till June, 1957 when he was appointed  
as Assistant Director of Supplies in the Office of the

D.G. S&D. This appointment was preceded by selection on the basis of results in the Indian Engineering Services Examination held by U.P.S.C. He was posted as Assistant Director of Supplies in India Supply Mission London in April, 1964. He was promoted as Deputy Director of Supplies in March, 1971 and was given further promotion as Director of Supplies in October, 1982 and posted at Calcutta. Subsequently, in August, 1983, he was posted as Director of Disposals in Delhi. In January, 1985, the applicant was posted as Director of Supplies in Structural Directorate, New Delhi.

The applicant's case is that ever since joining service in September, 1950, he had never been communicated any adverse remarks from his Confidential Reports except 1974/75 which only pertain to the effect that he was not polite to the outsiders. The applicant also referred to charge-sheet dated 26.8.1977 and ultimately a penalty of reduction in pay to the lower stage for a period of two years was imposed on the applicant vide order dated 8.8.1979. He had filed an appeal to the President of India under Rule 23 of the CCS(CCA) Rules, 1965 on 27th September, 1979. He was subsequently informed that no appeal lies against the order made by the President. The applicant thereupon filed a Writ Petition in the High Court of Calcutta but on the establishment of the Central Administrative Tribunal, the aforesaid Writ Petition was transferred to the Calcutta Bench of the Tribunal. The Tribunal took the view that even though the appeal did not lie to the President

9

against the penalty but there was a remedy available to the applicant for a revision under Rule 29 of the CCS(CCA)Rules,1965. The applicant then made a request to consider his appeal as a revision. The revision was pending when the matter came up before the Tribunal. Thereafter another charge-sheet was served on the applicant vide Memo dated 5.7.1986. The applicant denied the said charges and asked for hearing in person. Enquiry Officer was appointed and that inquiry too was pending when the matter came up before the Tribunal. Thereafter the present order of compulsory retirement was passed on 30.12.1986. The applicant has challenged the order as arbitrary and violative of Articles 14 and 16 of the Constitution. There being no adverse entry in the ACR and no conclusion having been reached in the inquiries mentioned above, the applicant could not be compulsorily retired from service. The order passed against the applicant was punitive. He has, therefore, prayed that the order dated 30.12.1986 be quashed.

In the reply by the respondents it was stated that a serving officer is compulsorily retired from service when the recommendations of the Reviewing Committee are considered by the Minister-in-charge of the Department and he takes a decision in public interest for retiring a gazetted officer. This is done on the basis of the overall assessment of work and performance of the Officer on the basis of the available material on record and not the Confidential Reports alone. The retirement order dated 30.12.1986 under the provisions of F.R. 56(j) has been passed by the competent authority

after observing the procedures laid down in this regard and even three months pay and allowances having been paid in lieu of three months notice to the applicant. The applicant had a remedy of making a representation to the competent authority which he did by letter dated 3.1.1987 and which was pending when the Application was filed but it has subsequently been dismissed and the applicant had been communicated the decision. It was said that the applicant having been retired under FR 56(j) was no longer in service. It was also denied that the impugned order was illegal, unjust arbitrary or in any way violative of Articles 14 and 16 of the Constitution. Detailed parawise reply was also filed on these lines.

During the hearing of the case today, Shri G.D.Gupta, learned counsel for the applicant contended that the order compulsorily retiring the applicant was bad in law and unsustainable. Firstly, the applicant was retired within less than a year from his superannuation which/and this could not be done; secondly, he had not been retired at the age of 50 or 55 years or on the completion of 30 years service but at the fag end of his career; thirdly, there is no adverse entry against him; fourthly, there is no allegation of lack of integrity and there is no charge of lack of effectiveness. Consequently, the applicant could not be compulsorily retired under F.R. 56 (j).

Shri N.S.Mehta, learned counsel for the respondents stated that the original record was not available today.

11

but the relevant facts have been set down in the reply in paragraph 6.5 onwards. He further stated that the exercise of power under F.R. 56(j) was not bad in this case for having been issued within a year from the date of his superannuation as this was not a case of lack of effectiveness on the part of the applicant. He referred to the consolidated Instructions issued by the Government of India vide Office Memorandum No. 25013/14/77-Estt.(A) dated 5.1.1978 and, in particular, to para 3 (d) which reads as follows:

"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."

We have heard learned counsel for the parties and perused the record and in our opinion, this is a case in which the impugned order of compulsory retirement must be set aside. A perusal of the reply of the respondents would make the position clear. In paragraph 6.5. of the reply it is stated that Shri C.C.Dutta has been categorised as average officer in the C.R. of 1983. In the C.Rs for 1974 and 1975, there are remarks that he is not always courteous in behaving with outsiders and senior officers and from the Personal File it was noticed that there were two preliminary enquiry cases by Central Bureau of Investigation where he has been warned to be more careful in future. There was a penalty of reduction in pay to the lower stage in 1979 for a period of two years. He was twice warned to be more careful in his work in future and in regard to submission of representation in 1980 and in 1983. Paragraph 9 of the

12

reply shows that the applicant's <sup>name</sup> appeared in the 'suspect list' for the year 1985. It is stated in the reply that such lists are drawn up every year by the Department in consultation with CBI. His name was also retained in the list for 1986. His name also appeared in the list of doubtful integrity for the years 1979-82. His integrity certificate was withheld in the DPC Meeting held in UPSC on 3.9.1981 due to the reasons that his name was included in the list of doubtful integrity. Subsequently, in the year 1982 when he was being considered for promotion as Director, DG S&D had given the integrity certificate in his favour on 28.8.1982. It is, therefore, clear that by giving him the promotion as Director, DG S&D, the earlier inclusion of his name in the 'suspect list' was not a bar to his promotion. A list of suspects may be maintained by the Department but cannot be made use of unless it is entered in the A.C.R. and communicated to the officer. Even if there be any adverse entry in the A.C.R., the very fact that it was not communicated to the applicant and cannot be read against him.

It was fairly conceded by Shri N.S. Mehta that the applicant was not retired on the ground of lack of effectiveness. It meant that his efficiency was not in doubt. The other ground that could be pressed into service was his integrity. However, there is nothing material on the record to show that he lacked integrity. If he lacked integrity, he would not have been promoted to the post of Director as already indicated. His inclusion in the 'suspect list' cannot operate against him. In this view of the matter, we

do not find sufficient material on the record to justify taking of action of compulsory retirement against the applicant.

The law requires that a Review Committee has to consider the case of the every officer who is proposed to be retired compulsorily. That Review Committee must meet at least six months earlier than the date of the issue of notice for compulsory retirement. The compulsory retirement can be made when a person reaches the age of 50 or 55 years or completes 30 years of service. The applicant reached the age of 50 in 1979 and 55 in 1984. At neither of these stages he was given the order for compulsory retirement. He was given the order when 11 months remained for him to reach the age of superannuation. Even though he is not being retired on the ground of lack of effectiveness but nevertheless the very concept that the Government had fixed three particular periods when the order could be issued viz. on attaining the age of 50 or 55 years or completion of 30 years service, there should be some justification given by the respondents for retiring him only when he had a few months for retiring in the normal course.

We may refer here to the case of SHRI A.N. SAXENA AND SHRI S.L. BEHEL Vs. CHIEF COMMISSIONER (ADM) AND COMMISSIONER OF INCOME TAX (ATR 1988 (1) CAT 326). A Division Bench of the Central Administrative Tribunal while considering the matter rightly held:

"No doubt, the Government have absolute powers to retire an employee prematurely in public interest. As has been held by the Supreme

Court in Brij Mohan Singh Chopra Vs. State of Punjab (AIR 1987 SC 948) "the public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing with the services of those who are inefficient, dead-wood or corrupt and dishonest". The weeding out of those employees who are proved to be corrupt, dishonest, inefficient or lacking in integrity is certainly in public interest. However, a conclusion that a particular employee is corrupt, dishonest, inefficient or lacking in integrity has necessarily to be arrived at on the basis of reliable material."

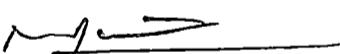
Another passage from the above decision may be reiterated as it is significant in all cases of compulsory retirement:

"When clear instructions have been laid down by the Government regarding assessment of integrity of an employee, the steps to be taken before arriving at a conclusion against the integrity of an employee, the need for communicating to the employee the adverse entry, if any, made in respect of integrity, so that he is enabled to make representation against the same and to have it expunged it is opposed to the salutary principle underlying the aforesaid instructions to arrive at an assessment of lack of integrity on the mere examination of a few cases of tax assessment made by the applicants and to take a decision without even affording an opportunity to the applicants to offer their comments with respect to the tax assessments in the particular cases. When it would be unjust, unfair and contrary to the principles of natural justice to prematurely retire an employee on the basis of adverse entries in his confidential reports which are not communicated to him, it will be more so if it is done when no such adverse entry exists at all in the confidential report. When the confidential report is the solemn document relating to the assessment of the various qualities of the employee including his integrity, dehors the same, if a decision is arrived at regarding the integrity of the employee on a unilateral examination of some other records behind the back of the employee, it

is violative of all canons of justice and fair-play, and if an employee is prematurely retired solely on its strength, such retirement cannot be upheld."

We are in entire agreement with the principle enunciated above. After examination of the material on record, we are satisfied that a case has been made out for interference in the present O.A. We are of the view that the applicant's compulsory retirement was bad in law and cannot be sustained.

In the result, therefore, the Application is allowed, the impugned order dated 30.12.1986 compulsorily retiring the applicant from service is quashed. The applicant shall be treated as being in service without a break till 30.11.1987, the date of his superannuation, and he shall be entitled to salary, allowances and other benefits admissible as per rules. Costs on parties.

  
(M.M. Mathur)  
Member (A)  
22.5.1990.

  
(Amitav Banerji)  
Chairman  
22.5.1990.

SKS