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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

1. OA NO.118/87

DATE OF DECISION: 10.04.1992.

NANAK CHAND

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

2. OA NO.452/87

BALBIR SINGH

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE-CHAIRMAN(J)

THE HON'BLE MR. P.C. JAIN, MEMBER (A)

FOR THE APPLICANT

**SHRI G.D. GUPTA WITH SHRI
RATAN PAUL, COUNSEL.**

FOR THE RESPONDENTS

MS. GITA LUTHRA, COUNSEL.

JUDGEMENT

(DELIVERED BY HON'BLE MR. JUSTICE RAM PAL SINGH,
VICE-CHAIRMAN (J))

This judgement shall also govern the disposal of OA No.452/87 (Balbir Singh Vs. Union of India) as the questions involved are identical in both.

The applicants, by these Original Applications, filed under Section 19 of the Administrative Tribunals Act, 1985, have challenged the order of the respondents in which they have compulsorily retired them after the completion of 30 years of service. They, therefore, pray for quashing Annexure 'A', the impugned orders dated 19.9.1985 and 18.9.1985.

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2. The applicant, Nanak Chand was appointed in Delhi Police as Foot Constable on 4.1.1951 and was confirmed in the rank w.e.f. 13.3.1954. He was promoted to the rank of Head Constable on 24.5.1957 and was confirmed in this rank w.e.f. 15.11.1962. He was promoted as A.S.I. on 8.1.1975 and was confirmed w.e.f. 1.8.1980. He was promoted as Sub-Inspector (Executive) on adhoc basis w.e.f. 6.10.1983.

3. The applicant contends that he was never communicated with the adverse remarks which have been taken into consideration by the respondents in passing the impugned order. He has still four years to reach the age of 58 years when he shall retire on superannuation. The applicant also challenges his premature retirement on the ground that he has not been paid three months of notice, salary and allowances. He further contends that Rule 40 (1)(b) of Central Civil Services (Pension) Rules of 1972 have been contravened by the respondents in retiring the applicant prematurely from service. He also contends that there was no material before the respondents when he was compulsorily retired to show that he is being retired in public

interest. He contends that he has earned commendations during the course of his service period with several certificates and awards. He also contends that even after the penalties were imposed upon the applicant they stood wiped out when he was promoted as A.S.I. on 8.7.1975 and was subsequently confirmed on the said post on 1.8.1980 and further promoted as S.I. on 6.10.1983, though on adhoc basis.

4. On notice the respondents appeared and filed their counter-affidavit. They have opposed the contents of the O.A. and inter alia maintained that there were several bad entries in the service record of the applicant and he was punished departmentally. In para 2 of the counter-affidavit a detailed reply with regard to the bad

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side of the service of the applicant has been enumerated which need not be produced at this stage. The respondents have also enlisted the good entries and good deeds which the applicant has earned during his service. They further contend that due to unsatisfactory service record the applicant was directed to be compulsorily retired w.e.f. 19.9.1985. They justified their stand that compulsory retirement of the applicant is in public interest. The respondents further proceed to contend that the applicant's name finds place in the list of the police officers of doubtful integrity in the year 1983 when he was posted at Police Station, Sarai Rohilla, Delhi. A long list has been given by the respondents showing that the applicant was a police officer with doubtful integrity. They, therefore, contend in their counter-affidavit that the compulsory retirement of the applicant from service was in accordance with Rule 40(1) (b) of Central Civil Services (Pension) Rules of 1972 (hereinafter referred as Rules).

5. The impugned order passed by the respondents on 19.9.1985 is reproduced below for convenience:-

"Whereas the Addl. C.P.(A.Police) (appropriate authority) is of the opinion that it is in public interest to do so;

NOW, THEREFORE, in exercise of the powers conferred by Rule 40 (i)(b) of the Central Civil Services (Pension) Rules, 1972, the Addl. C.P.(A. Police) (appropriate authority) hereby retire Sh. Nanak Chand S.I. No.942/D with immediate effect, he having already completed 30 years of service/30 years of service qualifying for pension on the 4.1.1981. Shri Nanak Chand S.I. No.942/D shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate which he was drawing them immediately, before his retirement.

sd/- K.SINGH

Designation of the appropriate Authority.

To

Shri Nanak Chand SI No.942/D
(Through D.C.P./X Bn.DAP

No.4361-441/Estt.XBn.DAP, Dated Delhi, the 19.9.85."

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A similar order was passed in the case of Balbir Singh on 18.9.1985 by the competent authority.

6. Constable Balbir Singh in OA No.452/87 also challenges his pre-mature retirement order (Annexure A-1) dated 18.9.1985 at the age of 55 years of age under the Rules. He contends that he has a right to go in service upto the age of superannuation, till the age of 58 years. This applicant, Balbir Singh, joined the Delhi Police as a Constable on 21.8.1952. He was promoted in 1954 and his name was entered in List 'B' of the promotion in 1957, after training and departmental examination he was posted in different Police Stations of Delhi. He was promoted to the post of Head Constable on 1.10.1961 and was posted in Special Branch of different Police Stations of Delhi. This applicant appeared in the qualifying test for promotion in 1970 and was deputed for A.S.I. course at Police Training College, Phillaur and was promoted as A.S.I. on 16.4.1971. Consequent upon this he was promoted as Sub-Inspector w.e.f. 8.8.1980. According to this applicant, he obtained 34 commendation certificates and cash awards in different periods of his service. He was communicated adverse remarks for the first time in 1974 for the period between 1.4.1973 to 5.7.1973. He submitted his representation against the adverse remarks. The adverse remarks, according to him, were "should work hard to improve himself" which were expunged on representation by order dated 26.4.1976 but other remarks remained in their place, though he filed review petition. According to the applicant he was given three penalties of censure in 1976 and others in 1982 and 1984. The penalty in 1984 was for absenting himself for three days without permission from duty. He contends that the impugned orders of compulsory retirement amount to punishment because they are based on

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allegations and without departmental enquiries, he cannot be punished. He thus prays for quashing the order of compulsory retirement on the ground that they are illegal, void, ineffective, ultra vires, arbitrary, malafide and discriminatory.

7. The respondents on notice appeared and filed counter, controverting the contents of the O.A. They admit that he was confirmed in the rank of A.S.I. w.e.f. 3.11.1976. According to them in para 1 of the counter the applicant was awarded punishment while he was posted in the Police Station, R.K. Puram by the Superintendent of Police, South District the punishment of censure. The appeal against this order was rejected by Additional Commissioner of Police. While posted in Police Control Room the applicant is alleged to have committed grave misconduct, negligence and carelessness in the discharge of his duties while he was detailed for duty on P.C.R. Van. He abstained from duty, contravening the procedure of standing orders of C.C.S. (Leave) Rules in 1973. Hence he was awarded the punishment of censure. The appeal was rejected. They contend that the Screening Committee and the Review Committee considered his case and concluded that the applicant should be prematurely/compulsorily retired from service. According to them this conclusion was arrived at after perusal of the relevant service records of the applicant and he was retired in public interest. The respondents also contend that the powers of the Government have been exercised according to the Rules for compulsorily retiring him from service.

8. It is not disputed that the applicants have completed 30 years of qualifying service for pension. In the impugned orders it has also been mentioned that the applicants shall be paid the sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the rate which he was drawing immediately

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before his retirement. The Rule provides:-

"48. Retirement on completion of 30 years' qualifying service.

1) At any time after a Government servant has completed thirty years' qualifying service-

- a) he may retire from service, or
- b) he may be required by the appointing authority to retire in the public interest and in the case of such retirement the Government servant shall be entitled to a retiring pension:

Provided that:-

a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and

b) the appointment authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three month's pay and allowances in lieu of such notice provided further that where the Government servant giving notice under clause (a) of the proceeding provision is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule:-

2) A government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority:

Provided that the request for withdrawal shall be within the intended date of his retirement.

3) For the purpose of this rule the expression 'appointing authority' shall mean the authority which is competent to make appointments to the service or post from which the Government servant retires"

9. We have heard Shri G.D. Gupta, counsel for the

applicants and Ms. Gita Luthra, counsel for the respondents

in great length. Both the counsel have cited plethora of

case-laws in their support. We directed the learned

counsel for the respondents to produce the personal file of

the applicants, copy of the decision/ minutes of the

Screening Committee and a copy of order/ decision/minutes

of the Review Committee. The respondents have produced for

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inspection these documents but they could not file a copy of the decision taken on the representation of the applicant. Shri G.D. Gupta, counsel for the applicant, in support of his contention has cited case-laws of the Hon'ble Supreme Court and this Tribunal, in great length. But the law has been finally settled by their Lordships of the Hon'ble Supreme Court in the case of Sh. Baikunt Nath Dass and Others versus Chief District Medical Officer, Baripada and Another (JT 1992 (2) SC page 1). In this judgement the Apex Court has reviewed all the old judgements of that Court and discussed them in great detail. The judgements assessed in Baikunt Nath Dass (supra) are Vaidhyanath Mahapatra (JT 1989 (1) SC 360), Brij Mohan Singh Chopra (JT 1987 (1) SC 673). The judgments delivered in J.D. Srivastav 1984 (2) S.C.R. 466, Amarkant Chowdhary (1984 (2) S.C.R. 299, Brij Bihari Lal 1981 (2) S.C.R. 29), Baldev Raj Chadha (1981 (1) S.C.R. 430), Gyan Singh Mann (AIR 1980 SC 1894), M.E. Reddy's case (1980 (1) SCR 736), Gurdayal Singh Fiji (1979 (3) SCR 518 and several other cases were also evaluated in great detail. All these cases have been dealt with in great length and their Lordships have arrived at the conclusion, which may be enumerated in chronological order in brief:-

i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

iii) Principles of natural justice has no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court could not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary; in the sense that no reasonable person would form the requisite opinion on the given material, in short, if it is found to be a perverse order.

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(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of the service before taking a decision in the matter of course attaching more importance to record of any performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above."

10. Thus, judicial scrutiny of an order of compulsory/premature retirement has been limited. The

order can be interfered with only when the order is passed

i) malafide or ii) it is based on no evidence, iii) it is

arbitrary or perverse. We shall, therefore, limit our

scrutiny to these three. On perusal of the O.A. it is

clear that no malafide has been alleged by the applicants

against the respondents. No evidence has been produced in

this regard. We have examined the service records of the

applicant, recommendations of the Internal Screening

Committee and the Minutes of the Review Committee. A close

look at these documents indicates that sufficient evidence

was present when the decision was taken by the respondents

to compulsory retire the applicant along with other Police

Officers. Perusal of these documents also indicates that

the conclusions of the Review Committee meeting dated

17.9.88 is based upon evidence. These conclusions cannot

be said to be perverse because they have arrived at the

conclusion that the compulsory retirement of the applicant

is in public interest. The Review Committee does not appear

to have arrived at the conclusion only on remarks

favourable or adverse to the applicant, but it appears that

it had formed its opinion on the totality of consideration

of the entire record.

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11. In the case of the applicant Balbir Singh the records show that the applicant also earned bad remarks along with good remarks. The minutes of the Review Committee meeting dated 17.9.1985 recorded the following, which was attended by Commissioner of Police as Chairman and Deputy Commissioner of Police Vigilance, Deputy Commissioner District and Deputy Commissioner of Police Special Branch, as members:-

"...carefully considered the service records of the Police officers of Group 'C' old Police Lines, Communication Unit Palam Air Port, D.T.S. Traffic, Crime and Railways, Police Headquarters Security and Licensing of Delhi Police who have completed 55 years of age or 30 years of service and having taken into consideration the recommendations of the Internal Screening Committee of the above mentioned Units, recommends that it is in public interest to retire the following officers prematurely under Rule 56 of the F.R./Rule 48 of the Central Civil Services (Pension) Rules of 1972."

12. The list of the VIII officers proposed to be retired prematurely includes the name of the applicant Balbir Singh also. For arriving at this conclusion the Review Committee, not only examined the service records of this applicant, but has also taken into consideration the recommendations of the Internal Screening Committees. As no malafide has been alleged by the applicant against the respondents in the O.A. we conclude that the impugned orders were not passed in a malafide manner. The evidence for assessment of the performance of the applicant in four years preceding this meeting was also present before the Review Committee. Therefore, the impugned order

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by the competent authority cannot be said to be either arbitrary or perverse. As the order of compulsory retirement is not a punishment, it carries no stigma with it nor any suggestion of misbehaviour. The opinion has been formed to retire the applicant compulsorily in the public interest has been based on evidence and the impugned orders appear to have been passed on subjective satisfaction of the Government. The principles of natural justice is not attracted in the context of an order of compulsory retirement. It appears that the Review Committee has considered entire records of service before taking this decision. Furthermore, an order of compulsory/premature retirement cannot be quashed on the ground that uncommunicated adverse remarks were taken into consideration by the Review Committee. The decision to retire a Government servant is taken in public interest which is paramount. A dead wood which has lost its utility to the society and to the state, which has to guard the public interest, has to be chopped off before it can cause further damage. When the utility of a Government servant has diminished to the level of zero, when he cannot be proved by tangible and admissible evidence to be dishonest in an enquiry, then this rule comes into operation. But the performance of the public servant has to be assessed carefully, without malice before he is given the marching orders after 30 years of service or 55 years of age. He is given pension for old age and is thus taken care of by the state.

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13. There is no such element of charge or imputation

in the case of compulsory retirement or pre-mature

retirement. The two requirements for compulsory retire-

ment are that the officer has completed qualifying

service of 30 years and that it is in public interest

to dispense with his further service. It is true

that this power of compulsory retirement may be used

when the authority exercising this power cannot sub-

stantiate the misconduct which may be the real cause

for taking the action. But the provisions made

it abundantly clear that the imputation of charge

is not in turn made a condition for the exercise of

the power. In other words, the compulsory retirement

has no stigma or implication of misbehaviour or in-

capacity. These rules are in paremateria with the

Fundamental Rule 56 (j). The remarks in the character

roll of an employee are recorded by the superior

officer while assessing the work and conduct of the

subordinate officer based on his personal supervision

or conduct. Some of these remarks may be purely

innocuous or may be connected with the general repu-

tation of honesty or integrity, which a particular

officer enjoys. It will indeed be difficult if not

impossible to prove by positive evidence that a parti-

cular officer is dishonest but those who have had

the opportunity to observe the performance of the said officer

from the close quarter are in a position to note the

nature and character not only of his performance but

also of the reputation that he enjoys. While consider-

ing the question of compulsory retirement it is no

doubt desirable to make an over all assessment of

the government servant's record, more than ordinarily,

value should be attached to the confidential reports

pertaining to the years immediately preceding such

consideration. It is possible that a Government

servant may possess a somewhat erratic records in

the early years of service but with the passage of

time he may have improved and it would be of advantage to continue him in service upto the statutory age of superannuation. Thus the entries in confidential records of the latter years have direct relevance.

14. The competent authority while considering and evaluating the performance of the applicants observed:-

"The service records of this officer show that during his service career he has been awarded both major and minor punishments from time to time. These observations are dated 13.9.85. The old punishments forfeiture of 6/5 years of approved service permanently. Censure by D.S.P. in 1978, Censure by A.D.C.P., New Delhi in 1979, Censure by C.P., New Delhi in 1978. Then are warnings to the applicant with regard to the doubtful integrity of the applicant. It was observed (while posted at P.S. Sarai Rohilla) he has investigated 324/34 I.P.C. This A.S.I. demanded Rs.100/- from Shangu Ram the complainant to arrest the accused person but later accepted Rs.50. After taking the bribery the A.S.I. arrested the accused person but released him after taking the money."

15. The minutes of the Review Committee dated 7.8.1985

show that it was attended by Commissioner of Police,

Deputy Commissioner of Police, Crime Prevention and

Vigilance and Deputy Commissioner of Police, Old Police

Lines. Minutes of the Review Committee Meeting dated

17.9.85 observed:-

"It carefully considered the service record of the Police Officer of Group 'C' of DAP DNS who have completed 55 years of age or 30 years of service and having taken into consideration the recommendations of the Internal Screening Committee of each DAP DN recommends that it is in public interest to retire the following pre-maturely under Rule 56 of Fundamental Rules/ Rule 48 of the Central Civil Services (Pension) Rules of 1972."

These remarks pertain to the applicant, Nanak Chand and 5 other Police Officers. These materials show that the competent authority had applied its mind to the communicated/uncommunicated entries in the service record of the applicant, overall conduct and performance

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spreading to several years previous to passing of the impugned order. This shows that the impugned order is based upon evidence and it is neither arbitrary nor perverse. As no malafide has been alleged, as observed earlier, we place our reliance on the case of Shri Baikunt Nath Dass (supra) in exclusion of plethora of case-laws cited by Shri G.D. Gupta and conclude that the impugned orders of compulsory retirement are not punishments and they imply no stigma nor any suggestion of misbehaviour. We also observed that the applicants have been retired in public interest and the orders of retirement from service were passed on subjective satisfaction of the Government. As the principles of natural justice have no place in the context of an order of compulsory retirement we have considered the case of the applicants whether the impugned orders suffer from malafide or are based on no evidence or they are arbitrary or perverse and we conclude that neither the element of malafide is present in the impugned orders nor they can be said to be based on no evidence. They also do not appear arbitrary or perverse. We are, therefore, of the view that these O.As. viz. 118/87 and 452/87 have no merit and deserve to be dismissed. Therefore, these O.As. are dismissed and the parties are directed to bear their own costs.

(P.C. JAIN)
MEMBER(A)

(RAM PAL SINGH)
VICE-CHAIRMAN

April 10, 1992

Section Officer
Central Administrative Tribunal
Principal