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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 649/87

DATE OF DECISION 28.7.92

Shri P.L. Amar ... Petitioner

Shri Vivekanand ... Counsel for the petitioner

Versus

Union of India ... Respondents

Shri P.H. Ramchandani ... Counsel for the Respondents

CORAM

Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

Hon'ble Shri I.P. Gupta (Member (A))

1. Whether reporters of local papers may be allowed to see the judgement ?
2. To be referred to the reporters or not ? Yes.

JUDGEMENT

(Delivered by Shri I.P. Gupta, Member (A))

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has requested for quashing the order dated 5th August 1986 retiring him prematurely under Rule 56(j) of FRs, the applicant having attained the age of 50 years on 31st July, 1984.

2. The applicant was substantively appointed to the grade of Upper Division Clerk in the Ministry of Communications by order dated 16.12.1980 (Annexure P2). By order dated 2nd March, 1983 he was appointed to the Assistant Grade on a long-term basis effective from 17.12.1981 (Annexure P.3). He was allowed to cross efficiency bar w.e.f. 1.10.1982 by order dated 13.3.1984.

3. The Learned Counsel for the applicant contended that -

inapplicable.

(i) The applicant was a Group 'C' employee (UDC) and not Group 'A' or Group 'B' Government servant. Since his substantive appointment was against the post of UDC and he was only officiating on a long-term basis in the grade of Assistant, FR 56(j)(i) is/ reads as follows :-

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;

(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;

Provided that nothing in this clause shall apply to a Government servant referred to in clause *(e), who entered Government service on or before the 23rd July, 1966;

Provided further that a Government servant who is in a Group 'C' post or service in a substantive capacity, but is holding a Group 'A' or Group 'B' post or service in an officiating capacity shall, in case it is decided to retire him from the Group 'A' or Group 'B' post or service in the public interest, be allowed on his request in writing to continue in service in the Group 'C' post or service which he holds in a substantive capacity.

Therefore, he was not covered under FR 56(j)(i) and he could not be retired before the age of 55 years in any case.

(ii) The applicant was allowed to cross efficiency bar and promoted on long-term basis as Assistant by orders which were issued between March 1983 and March 1984 and, therefore, it can be presumed that nothing adverse against him existed, moreso when no adverse remarks were communicated to him.

The mention about imposition of penalty of censor by order dated February 1972 and with-holding of an increment for six months without cumulative effect in March 1980 would be washed out by subsequent action taken by the respondents themselves in appointing the applicant to the substantive grade of UDC in December 1980, promoting him as Assistant from 17.12.1981 by order dated 2nd March 1983 and allowing him to cross efficiency bar from 1.10.1982 by order dated 13th March, 1984.

not

(iii) The order of compulsory retirement is malafide since the foundation of this order was an incident of the alleged quarrel between him and an Assistant of Administration Section for which a departmental inquiry was ordered which continued till the end of December 1985 and since the inquiry bore no results, it was pursued but it seems that it culminated into his premature retirement, which if awarded as a penalty warranted the following of proper procedure under the CCS(CCA) Rules.

(iv) The second proviso to FR 56(j) already extracted earlier in this order provides that a Government servant who is in a Group 'C' post in a substantive capacity but is holding a Group 'A' and Group 'B' post in an officiating capacity shall in case it is decided to retire him from Group 'A' or Group 'B' post in the public interest be allowed on his request in writing to continue in service in the Group 'C' post which he holds in a substantive capacity. The respondent never intimated to him about their intention or decision to retire him prematurely and gave him no opportunity to make any request in writing for continuance in service in Group 'C' post which he was holding in a substantive capacity.

4. The applicant quoted cases to support his view that adverse entries, if any, awarded to an employee lose their significance on or after permission to cross efficiency bar or promotion to a higher post. In this connection, he referred to the case of Dwarka Prasad versus the State of H.P. ATR 1990

(1) CAT 937 and Ram Singh Pandey and State of H.P. and Others ATR 1989 (2) HP 80 6427. He also cited the case of Union of India and others v/s Shaik Ali ATR 1989 (2) SC 6857 where the retirement order by way of punishment without inquiry was set aside and where the finding was that the immediate and proximate reason for passing the impugned order was undoubtedly an unfortunate incident.

5. The Counsel also contended that the applicant had reached the age of 50 on 31st July 1984 and since he was allowed to continue beyond the age of 50, his case for premature retirement could not be reviewed, since the sword of democles should not be hanging over an officer all the time.

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6. The Learned Counsel for the respondent pointed out that it was wrong to say that the applicant had a clean record. He was awarded two penalties about which mention has been made earlier in this order. He was allowed to cross efficiency bar in 1984 from due date 1.10.1982 but his case for crossing E.B. was rejected twice earlier. As regards his confirmation in UDC, this was done on the basis of assessment of his CRs ^{relating} ~~containing~~ to the period he worked as UDC upto the year 1979. The order of compulsory retirement was passed after proper review by a High Power Committee and his representation was also considered by the Representation Committee which found no substance in his representation. The appropriate authority has the power to retire a Government servant at any time after he has attained the age of 50 years and there was nothing wrong in retiring the applicant when he was about 52 years of age. The Learned Counsel also referred to the case of Baikunth Nath Das v/s Chief Medical Officer & others ATR 1992 (1) SC 508 where the clear legal principles in regard to premature retirement were enunciated. It was mentioned therein that an order of compulsory retirement was not a punishment. It implied no stigma nor any suggestion of misbehaviour. The order is passed on the subjective satisfaction of the Govt. Principles of natural justice have no place in the context of an order of compulsory retirement. The entire record of service has to be taken into account, of course, attaching more importance to records of later years and an order of compulsory retirement is not liable to be quashed merely on the showing that while passing it uncommunicated adverse remarks were also taken into account.

7. Analysing the facts and arguments in this case, we find that the applicant is clearly covered by FR 56(j) (i). Even though he was only working as a Group 'B' employee on a long-term basis, FR 56(j)(i) speaks of employees who are working in Group 'B' posts on temporary capacity. The sting of punishment of censor and withholding of

increment passed in February 1972 and March 1980 lost its significance after his promotion as Assistant on long-term officiating basis later. Nevertheless, the entire record of service has to be seen and in this case the Review Committee after due consideration of his total record, passed the order of premature retirement. His representation was also rejected by the Appropriate Authority. No malafide in the order could be proved. Because even if the applicant had a quarrel with the Assistant in the Administration Department it was not the Assistant who was the Final Authority to pass the order of premature retirement. It will be carrying malafide too far if we assume that the said Assistant influenced the entire High Powered Committee meant for review and the Representative Committee. However, we find considerable weight in the contention of the Learned Counsel for the applicant that since the applicant was a Group 'C' employee in a substantive capacity and was holding a Group 'B' post only in an officiating capacity, he should have been given an option to continue in service in Group 'C' post. In this view of the matter we set aside the order of compulsory retirement dated 5th August, 1986 and direct that the applicant should be deemed to have continued against his substantive Group 'C' post with all consequential benefits. The applicant should be reinstated in his Group 'C' post unless the applicant does not want to be so reinstated. His willingness should be ascertained from him by giving him an opportunity. In case he is not willing the order of premature retirement could be considered for issue only prospectively.

I.P. Gupta
I.P. Gupta
Member (A)

28/7/92

Rampal Singh
Rampal Singh
Vice-Chairman (J)