

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 666/87
T.A. No.

198

DATE OF DECISION 25-8-1988

Shri Hari Shankar Sharma Petitioner

Shri Sant Lal Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

Mrs. Raj Kumari Chopra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the Judgement ? N

S.P. MUKERJI
(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

P.K. KARTHA
(P.K. KARTHA)
VICE CHAIRMAN(J)

(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

* * * * *

O.A. No. 666/87

Date of decision 25-5-87

Shri Hari Shankar Sharma Petitioner(s)

Vs.

Union of India & Others Respondent(s)

Shri Sant Lal Advocate for the
Petitioner(s)

Mrs. Raj Kumari Chopra Advocate for the
Respondents(s)

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S.P. MUKERJI, ADMINISTRATIVE MEMBER

(The judgment of the Bench delivered by
Hon'ble Shri S.P. Mukerji, Administrative
Member)

The applicant, who has been working as P.O. & R.M.S.
Accountant under the Directorate of Postal Services, Delhi
Circle, in this application dated 6th May, 1987, challenged
the order of compulsory retirement dated 24.2.1987 passed
under Rule 48 of the CCS (Pension) Rules, 1972.

2. The brief facts of the case are as follows. The

applicant was appointed as a Packer in 1957, promoted as Postman in 1961, as Postal Clerk in 1964 and thereafter, on passing departmental examination, promoted as Post Office and R.M.S. Accountant in 1979. On 2.9.83 he was awarded a punishment for gross negligence and lack of devotion to the duty in checking Over Time Allowance Bills and his increments were stopped for 30 months. The punishment was reduced to stoppage of increments for 20 months at the appellate stage and for six months at the revisional stage on 23.10.84. On the expiry of the period of punishment, he was allowed to cross the Efficiency Bar on 1.5.1984 and simultaneously given promotion to the lower selection grade with effect from the same date. On 17.12.1985, he was punished again after departmental enquiry for fraudulently claiming and receiving an amount of Rs.2,260/- against a bogus Leave Travel Concession claim, but on the ground that he voluntarily refunded the amount, only a punishment of withholding increments for 18 months was awarded. There was also a vigilance case under investigation against him for drawing House Building Advance on 16.7.1985 on a mis-representation for construction of a house, while he had already purchased a built ^{up} house at the site. His case was considered by the High Powered Committee on 20.1.1987 and he was not recommended for being retained in service. Accordingly, the impugned notice dated 24.2.87 was served on the applicant retiring him under Rule 48 of the CCS (Pension) Rules, 1972 with effect from 9.3.1987 on completion of 30 years of qualifying service on 8.3.1987 or on the expiry of the 3 months of the notice, from the date of the service, whichever is latter.

3. The applicant has challenged the impugned order on the ground that the order is not in the public interest

(b)

and that he has been denied natural justice that the order is in violation of the guidelines issued by the Government of India in the sense that he could ^{not} be retired compulsorily as he had got promotion within 5 years from the date of such retirement. He has also argued that the impugned order having passed on the two punishments, he cannot be subjected to double jeopardy by suffering the punishment of compulsory retirement also. He has challenged the notice also as being defective and vague.

4. The respondents have argued that having been served with the notice on 24.2.1987, the applicant represented on 11.3.1987 and without waiting for atleast six months, rushed to the Tribunal with this application dated 6.5.1987. Thus the application is said to be premature. They have also argued that the High Powered Committee recommended his retirement on the basis of his overall performance and such retirement is neither a punishment nor a stigma on the applicant.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the principle of natural justice is concerned, it has been held in Union of India Vs. Col. J.N. Sinha (1971) 1 SCR 791 that compulsory retirement does not involve civil consequences and thereby it is not necessary to afford a Government servant an opportunity to show cause against his compulsory retirement. This fact has been reiterated by that Court in E.V. Naidu Vs. U.O.I. AIR 1973 SC 698 and Union of India Vs. M.E. Reddy SLJ 1979 SC 738. It has also been held by the Supreme Court in C.J. of A.P. Vs. L.U.A. Dixitulu AIR 1979 SC 193 that compulsory retirement simpliciter in accordance with the terms and conditions of service does not amount to dismissal

or removal or reduction in rank under Article 311 or under the service rules because the Government servant does not lose the terminal benefits already earned by him. Accordingly, the applicant's contention that he has been subjected to double jeopardy by impugned order of compulsory retirement under Rule 48 of the CCS (pension) Rules, 1972 is not tenable.

6. As regards the applicant's contention that the facts of his being allowed to cross the Efficiency Bar on 1.5.1984 and promotion to L.S.G. on the same date should have protected him from compulsory retirement in 1987, this matter has been dealt with in a similar case of Sadhu Ram Vs. U.O.I. and Others, AIR 1987(2) CAT 51, by the Principal Bench of the Tribunal to which one of us was a party. In that case also as in this case, before and after crossing the Efficiency Bar, the employee was warned and charge-sheeted. He had earlier been promoted in 1981, crossed the Efficiency Bar in October, 1982, but was retired in public interest in October, 1985. The Tribunal in that case observed as follows:-

" We cannot accept the argument of the learned counsel for the petitioner that crossing of E.B., promotion or confirmation at any point of time washes out all the proceedings, delinquencies, shortcomings of the officer for the purpose of compulsory retirement in public interest. In Satpal Singh v. D.I.G.(police) and another 1985(2) SLR 36, the High Court of Punjab and Haryana even after discussing the ruling of the Supreme Court in Swami Saran Saksena v. The State of U.P., observed that adverse entries prior to the date of crossing Efficiency Bar can be looked into for premature retirement and that entire service record has to be scanned and reviewed as noted by the Supreme Court in Union of India v. M.E. Reddy and another 1979(2) SLR 792. In Swami Saran

Saksena's case the reference to crossing of Efficiency Bar by the Supreme Court was a part of their total argument that 'on a perusal of the material on the record and having regard to the entries in the personal file and character roll of the appellant it is not possible reasonably to come to the conclusion that the compulsory retirement of the appellant was called for'. Thus the Supreme Court itself in Swami Saran Saksena's case went through the entire record before the crossing of the Efficiency Bar also and found no material to sustain compulsory retirement. Thus one cannot deduce that the performance and conduct of an officer prior to the crossing of the E.B. or promotion is a closed book for the purpose of judging if the retention of the officer will be in public interest or against it".

Accordingly, we cannot give undue importance to the crossing of Efficiency Bar or the promotion of the applicant before us on 1.5.1984 so as to protect him from compulsory retirement ^{in February, 1987,} especially when after that date ^(1.5.84) on 17.12.85, he was punished with the stoppage of increments for 18 months for defrauding the Government of Rs.2,260/- through bogus LTC claim. This amount had been voluntarily refunded by the applicant as a result of which the milder punishment was given.

7. We have had occasion to run through the Confidential Reports earned by the applicant during the five years prior to his compulsory retirement. For the period between 3.5.1985 to 31.3.1986, the following adverse entries were communicated to him:-

" Has no regard for office discipline & decorum. Very irregular and uncertain in attendance. Repeatedly stayed away from duty w/o prior approval, despite written/oral warnings and advise in person many a time".

" Increments stopped for 1½ years vide memo No.F.11/85-86 dt.17.12.85 for preferring false LTC claim. His appeal stand rejected

(V)

vide c.o:memorandum no. staff/H.1/5/86 dated 27.3.86.
General performance too is deplorable.
Warned vide memo B.H.7 dated 29.10.85 and
15.2.86 for unauthorised absence from duty".

" Shows scant regard for duty & discipline.
Advised to work sincerely with devotion and
discipline in his own interest".

" Very poor".

His integrity for this period was also not considered to be clean; but even if this report is not taken into account as it was not communicated, the aforesaid adverse entries clearly indicated the applicant's unsuitability. During 1985 it was detected that he had drawn a House Building Advance of considerable amount by making a wrong representation that he ^{was} ~~is~~ constructing a new house which has come to the plinth level, when at the site an old built up house was detected. In 1984, he was given a punishment of stoppage of increment for gross negligence and lack of devotion to duty. His performance during 1984 and 1985 was found to be of average quality. During 1983-84 his performance was colourless and average. He earned a similar report during 1983. During 1981-82 and 1982-83 also his performance was only average. We are satisfied that his compulsory retirement on the basis of his overall performance during five years prior to his such retirement, was in the public interest and cannot be said to be vitiated by malafides, arbitrariness or for collateral reasons.

8. We do not find any ambiguity or vagueness in the notice which clearly gives him three months notice

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before retirement after completion of 30 years of service on 8.3.1987. In the facts and circumstances, we do not find any merit in the application and reject the same. There will be no order as to costs.

S.P.M.
25.8.88
(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

A.K.K.
25.8.88
(P.K. KARTHA)
VICE CHAIRMAN