

(25)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. No.1577/90

New Delhi, dated the 2th January, 1995

CORAM

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri C.M.Parashar,
S/o Shri Ramji Lal Parashar,
LSG Postal Assistant,
2354, Bharampura, Chawri Bazar,
Delhi-6

... applicant

(By Advocate Shri A.Kalia)

v/s

1. Union of India through

The Chief Postmaster General
Rajasthan Circle, Jaipur.

2. Mrs Devika Kumar,
Director, Postal Services,
Jaipur Region, Jaipur

... Respondents

(By Advocate Shri M.K. Gupta)

JUDGMENT (ORAL)

L Hon'ble Shri S.R. Adige, Member (A) J

In this application Shri C.M. Parashar, Sub Postmaster, H.B.C. P.O. Alwar has impugned the order dated 18-6-90 (Ann.1) forwarding a copy of the order dated 11-6-90 prematurely retiring the applicant

from service upon completion of 30 years of qualifying service w.e.f. 31.5.1990.

2. A perusal of records shows that the applicant was appointed as Packer at GPO, Delhi on 10-5-60, his date of birth being 21.8.1938. He was promoted as Clerk on 3-3-1964 and was thereafter confirmed as such on 1-3-1966. Subsequently, he was promoted as Postal Signaller w.e.f. 30.9.70, and according to the contents of OA, on the recommendation of the D.P.C. he was allowed 16 years time bound promotion scale (Rs 1400-2300) w.e.f. 30.11.1983.

3. The applicant's contention is that he possesses a good record of service, but inspite of that, the respondents have chosen to prematurely retire him, because of bias, prejudice, malice and to settle scores with him, because he happens to be an important staff Union Functionary. The main grounds taken in the OA are that the impugned order is punitive, arbitrary and discriminatory; it has been passed by a person not competent to do so and if the respondents were not satisfied with the applicants work, they could have reverted him to

a lower post in accordance with DPAT's O.M. dated 4-8-89 instead of retiring him prematurely. It has also been urged that the prescribed procedures have not been followed.

4. We have heard Shri Kalia, counsel for the applicant and Shri Gupta, counsel for the respondents.

5. From a perusal of the extracts of the applicant ACRs from 1980-81 right upto 1989-90 which are on record, It is clear that his record of service has been extremely unsatisfactory. His work and performance has been variously described as slow, poor" devoid of human virtues, unamendable to discipline, un-cooperative etc. Other such epithets have also been used to describe his performance and it is noted that the applicant has had a consistently poor record of service during this period. He has also been awarded the punishments of censure, withholding of increments etc. during this period. The applicant has contended that many of these adverse entries were not communicated to him, but it is well settled by now that even un-communicated adverse remarks may be taken into

consideration by the competent authorities while reviewing the record of service of a Govt.servant to determine whether he should be allowed to continue in service or may be prematurely retired under FR 56-J.

6. Under the circumstances, if the respondents after following the prescribed procedure have held on the basis of the applicants service record that he was not fit to be retained in service and have therefore, chosen to retire the applicant prematurely upon completion of 30 years of service it cannot be said that their action was malafide, prejudiced, biased, arbitrary or discriminatory.

7. In this connection, we have also perused the contents of DPAT's O.M. dated 4-8-89 on Shri Kalia placed reliance. This O.M. merely gives the authorities the option to revert a Govt.servant to a lower post in lieu of premature retirement. Shri Kalia has argued ^{very} that the respondents could/will have reverted the applicant to a lower post instead of prematurely retiring him. While this option is no doubt available, it cannot be read to mean that it fetters the hands of the authorities in any manner to prematurely retire any govt.servant with a consistently bad record of service. After reviewing the applicants past record of service, it is clear that the

respondents have concluded that the applicant was not fit to be retained in service at all, and therefore, if they chose not to revert the applicant to a lower post, but to prematurely retire him instead, their action cannot be faulted.

8. Shri Kalia has asserted that the applicant happens to be an office bearer of the Staff Union and, therefore, the respondents were prejudiced towards him. The charge of prejudice has been denied by the respondents, and in any case, there are no materials on record to establish that the applicant were inimically inclined towards the applicant and such action to sustain the allegation of prejudice and malafide.

9. Shri Kalia has also asserted that the applicant is a technical expert and therefore, cannot be retired prematurely in view of the provisions of FR 56(K) (i)(b). The post of Sub-post Master cannot be described as a tech.expert and in any case, the sub rule relied upon relates to a scientist or technical expert who is on assignment under the ITEC Programme of the MEA, or is posted

abroad, or goes on a specific contract assignment and has therefore, no application to the facts and circumstances of this case.

10. Respondents counsel, Shri Gupta has shown us the departmental file in which decision to retire the applicant prematurely was taken. We note that the screening committee after reviewing the applicants service record did not recommend his retention in Govt. service, and this recommendation was subsequently placed before the High Powered Committee which also endorsed that view. Thereafter the applicant also filed a representation before the Secretary, Department of Posts which was rejected. It is thus clear that his case received consideration at every level. Under the circumstances, we cannot ^{find} find any infirmity in the procedure followed.

11. In this connection, Shri Gupta has also invited our attention to the decision of the Hon'ble Supreme Court in UOI & Others v. Narismiya Ahmadmiya Chauhan 1994 (28) ATC 66 wherein it has been held that the power under Fundamental Rules 56(j) can be exercised by the appropriate authority at any time in public interest after the govt. servant has attained the relevant age or

has completed the period of service as provided under the Fundamental Rules. The Appropriate Authority has to form the opinion that it is in the public interest to retire a person under FR 56(J) on the basis of the service record of the person concerned. There is no other bar ^{to} by the exercise of the power under the said Fundamental Rules by the prescribed authority. Govt. instruction are only guidelines laid down by the Central Government for its functioning. A Govt. servant cannot be heard to say that though the order of retirement is justified on the basis of his service record but since there is violation of some govt. instructions the order is liable to be quashed. The judgment further states that if the record is adverse the Govt. servant cannot take shelter behind the executive instructions and must be "chopped off" as and when he catches the eye of the prescribed authority.

13. In the facts and circumstances of this case Therefore, the impugned order warrants no interference and this application, therefore, fails and is dismissed.

The interim orders passed earlier and extended from time to time are vacated. No costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member(J)

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M. Adige
(S.R. Adige)
Member(A)