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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No. 1689/90

New Delhi, dated 24th March, 1995

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

Hon'ble Shri K. Muthukumar, Member (A)

Chandan Singh  
son of Sh. Raghubir Singh,  
r/o R-102, Ramesh Park, Laxmi Nagar,  
Delhi.

.. Applicant

(By Advocate Shri A.S. Grewal )

Vs.

1. Lt. Governor, Delhi through  
Chief Secretary,  
Delhi Administration, Delhi.
2. Commissioner of Police, Delhi,  
Delhi Police Headquarters, MSO Bldg.,  
I.P. Estate, New Delhi.
3. Deputy Commissioner of Police,  
North East District, Delhi.

.. Respondents

(By Advocate Shri Surat Singh )

ORDER (ORAL)

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

The applicant is aggrieved by the order passed by the Deputy Commissioner of Police dated 29.8.1989 (Annexure -A ) compulsorily retiring him from service in exercise of the powers conferred under Fundamental Rule 56 (j) (ii).

2. The brief facts of the case are that the applicant was appointed in Delhi Police as Constable on 18.4.1955. On 27.1.1989, he was promoted as Head Constable. By order dated 21.4.1989, a disciplinary enquiry was instituted against him for alleged mis-conduct of renting his house No.R-103, Ramesh Park, East District, Delhi to one Smt. Panchi wife

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of Shri Kanta Prasad to use it as a brothel, while this Disciplinary Enquiry was pending, his case was placed before the Screening Committee/ Review Committee for action under FR 56(j) and the impugned order of compulsory retirement was passed on 29-8-1989.

3. The main grounds taken by the applicant impugning the order of compulsory retirement are:-

- (i) Based on the judgments of this Tribunal in Mansa Singh v. Lt. Governor of Delhi (OA No. 62/90 dated 2-6-1994) and Ram Kishan v. Lt. Governor of Delhi & Ors. (OA 809/90 dated 31.8.1994) the respondents could not retire him when hardly a few months earlier he was promoted to the post of Head Constable and hence, this action is malafide.
- (ii) The second ground is that other than the departmental enquiry proceeding initiated against him subsequent to the promotion, no adverse remarks were communicated to him and hence the compulsory retirement is based on the departmental enquiry, which is against the Rules.

4. The respondents, in their reply, have denied the averments. They submit that the order had been passed as a result of screening of the entire service record of the applicant and in public interest. They have admitted that a departmental enquiry for renting out his house No.R-103, Ramesh Park, East District, Delhi to one Smt. Panchi to use it as a brothel was initiated on 21.4.89 and was pending. They have further stated that the departmental proceedings against the applicant has been dropped vide order dated 1.12.1989, because of the order of the compulsory retirement. The respondents have also stated in their reply that the applicant has been given adverse remarks <sup>earlier</sup> in the confidential reports as given in para 5 (b).

5. We have considered the arguments of the learned counsel of both the parties and perused the records in the case, including the minutes of the

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Review Committee dated 22-8-1989 submitted by the respondents.

6. It is seen from the reply, that subsequent to the promotion of the applicant as Head Constable on 27.1.1989, other than the disciplinary proceedings, no other punishment was awarded to him after his promotion. ~~Other respondents have also not brought to our notice any adverse ACRs after this date.~~ 13

7. It is also noted that the applicant has given address in the OA as R-102, Ramesh Park, Laxmi Nagar, Delhi. The respondents, in their reply, have apparently instituted a departmental proceeding in respect of house No. R-103, Ramesh Park, East District, Delhi. In the service record of the applicant, submitted by the respondents, we note that in the nomination forms for benefit of U.T. Group Insurance Scheme and nomination for D.C.R.G. the address given by the applicant is R-102, Ramesh Park, Laxmi Nagar, <sup>be</sup> Delhi. In the circumstances, there appears to <sup>be</sup> some contradiction in the address of applicant's house in respect of which a disciplinary enquiry had been instituted against him. Further, we also note that although the respondents state that the Screening Committee/ Review Committee reports have been taken into account alongwith the entire service record of the applicant, there is no indication in their records as to what were the facts that weighed with the Committees for recommending him for premature retirement. There is also no doubt, that apart from the disciplinary enquiry, the applicant has not earned any adverse remarks subsequent to his promotion as Head Constable on 27.1.1989. The learned counsel for the respondents admits that the applicant is not one of the accused

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persons in the criminal case pending and he is not at all concerned with the FIR, which has, however, not been produced before us inspite of the Tribunal's order dated 14.2.1995.

8. Shri A.S. Grewal, learned counsel for the applicant relies on the judgments in the case of Mansa Singh v.Lt.Governor, Delhi & Ors (Supra) and Jagdish Prasad v.Lt.Governor of Delhi (OA No. 1691/90 dated 30-9-1994) (Copies placed on record.)

9. Normally, the Tribunal is not to interfere in the order of compulsory retirement provided there are some adverse enteries in the ACRs of the affected person, and the competent authority has acted in a bona fide and reasonable manner, taking into account the entire record <sup>for</sup> forming the opinion to compulsorily retire the applicant in the public interest (See Baikuntha Nath Das & Anothers v.Chief Distt. Medical Officer (JT 1992(2) SC 1) Although, the applicant has no doubt been awarded various punishments during his service from 1955, it appears that after his promotion as Head Constable on 27.1.1989 he has not earned any adverse remarks in his ACRs before the impugned order of 29-8-89. After his promotion as Head Constable the earlier adverse entries in the ACR lose their sting and get diminished. The compulsory retirement order has been passed seven months thereafter and the Disciplinary Enquiry proceedings have also been dropped, which are relevant factors.

10. In view of the above facts in the case, we are satisfied that the competent authority has passed the impugned order based on the disciplinary

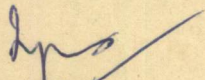
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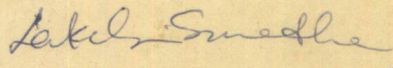


proceedings pending against the applicant at that time, which was later dropped, which appears to be short cut method and is against the rules (See also the decisions in Mansa Singh's case and Ram Kishan's case (supra). In Ramachandra Raju v. State of Orissa (1995) ATJ 273 at page 276, the Supreme Court referring to another similar case as here, (Ram Ekbal Sharma v. State of Bihar) ( Vol.78-1991 F.J.R.p.1) held that though the order of compulsory retirement was couched in an innocuous language the Court could look into the record by lifting the veil and consider whether the order was by way of punishment. In the background of the facts <sup>of the case</sup> and principles laid down, the exercise of power ~~to~~ compulsorily retire the applicant on the foundation of the pending disciplinary action appears to be illegal. Accordingly, the impugned order of compulsory retirement is quashed and set aside.

11. We have been informed that the applicant has superannuated on attaining the age of 58 years on 31.3.1991. In the circumstances, the applicant shall be deemed to have continued in service till the date of his superannuation, with all consequential benefits. We direct the respondents to pay his salary and allowances till 31.3.1991 and thereafter, the pensionary benefits as per the rules within three months from the date of receipt of a copy of this order.

12. In the result, the application is allowed but there will be no order as to costs.

  
(K.Muthukumar )  
Member (A)

  
(Lakshmi Swaminathan)  
Member (J)