

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1691/90.

Date of decision. 30-9-94

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

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

Shri Jagdish Prashad S.I.No.D-381,
r/o A-75, Jeevan Park, Pankha Road,
Post Office : Uttam Nagar,
New Delhi. .. Applicant

(By Advocate Shri A.S. Grewal)

versus:

1. Lt. Governor of Delhi,
through Chief Secretary,
Delhi Administration,
Delhi.
2. Commissioner of Police, Delhi,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
3. Additional Commissioner of Police,
New Delhi Range, New Delhi,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
4. Deputy Commissioner of Police,
North East District,
Delhi. .. Respondents

(By Advocate Mrs. Avnish Ahlawat)

O_R_D_E_R

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

The applicant, who was a Sub-Inspector with
the Delhi Police, was retired prematurely vide order
dated 29.8.1989 (Annexure 'A') under rule 56(j) of
the Fundamental Rules/rule 48 of the Central Civil

12

Service (Pension) Rules, 1970. He had made a representation to the authority for revoking the order of premature retirement on 16.9.1989 but having received no reply, he has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985:

who

2. The applicant ^{was} joined Delhi Police as Constable on 9.3.1953, promoted to the rank of Head Constable in 1957, promoted as A.S.I. on 16.9.1973 and further promoted as Sub-Inspector in 1975 and duly confirmed as S.I. in 1979. The main ground taken by the learned Counsel for the applicant is that just before the impugned order of premature retirement in 1989, the applicant had earned four commendation certificates (Annexures C-1 to C-4) and his name had also been mentioned in Delhi Police Samachar of August, 1989 (Annexure 'D'). According to him, in view of his excellent service record, there was no independent application of mind by the competent authority in passing the order of compulsory retirement on 29.8.1989. The learned counsel for the applicant has also relied on the judgment of this Tribunal in Mansa Singh, Ex-Head Constable v. Lt. Governor of Delhi [O.A. No. 62 of 1990, dated 2.6.94] which is also placed on record.

LS

(10)

3. The learned counsel for the respondents contended that the record of the applicant has not been upto the mark as he had been awarded punishments after his promotion as Sub-Inspector which has been given in detail in para 4 of the reply. The punishments awarded were 'censure' by DCP (East) on six occasions between 1986 to to 1988. The learned counsel for the respondents, therefore, contends that since the applicant had been awarded punishments on several occasions for gross negligence and carelessness in the discharge of his duties, he had been prematurely retired by the competent authority in exercise of the powers conferred under FR 56(j)(ii).

4. We have carefully considered the arguments of the learned counsel for the parties and also perused the record, including the personal file of the applicant and the minutes of the Screening and Review Committees held on 15.6.89 and which were produced by the respondents for our perusal. 22.8.89 respectively. The Committees had taken the decision to recommend that the order be issued for premature retirement of the applicant in the public interest. One striking feature in this case is that of the punishments awarded against the applicant seems to be by the DCP(East) in a period of less than two years i.e. from 1986 to 1988. It is also relevant to note

..

LS

that the commendation certificates received by

the applicant in which it is stated that they have

been given in recognition of his "extremely good and hard work", "high sense of responsibility, efficiency, acuteness & industry", "high sense of responsibility" and "acuteness

towards Government work", "displaying bravery and

devotion to duty^{are} in the year 1989 i.e. within a few months prior to the impugned order of compulsory retirement passed on 29.8.1989.

We have also seen the ACRs of the appli-

cant and we find that throughout he has been graded

as 'B' which also shows that he cannot be treated

as total dead-wood. The Screening Committee, in its

report, has simply recommended the case of the appli-

cant for premature retirement but had not given any

reason for doing so, although it appears that charac-

ter rolls and service book of the applicant had been

placed before them. The minutes of the Review Commi-

tee also do not give any particular reason or refer

to the fact that the entire record of the applicant

has been seen and evaluated before recommending the

premature retirement.

5. Normally, the Tribunal is not to interfere in

an order of compulsory retirement provided there is

sufficient material in the ACRs of the concerned person

which justify the decision taken by the competent

authority. The Supreme Court in Baikuntha Nath

Das and Anr. v. Chief District Medical Officer,

Baripada [JT 1992 (2) SC p.1] has held as under :-

"

- (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 have 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 would 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.
- (iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and 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 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 circumstances by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32. (Para 34) "

JS-

6. We have also seen the judgment of this Tribunal in Mansa Singh's case (supra). We find that in the case before us, the respondents have almost in the same breadth highly commended the services of the applicant in glowing terms referring to his bravery, acuteness and high sense of responsibility towards Govt. work, devotion to duty etc. and at the same time come to the conclusion that in the public interest he should be prematurely retired in that very year. Such inconsistent behaviour and attitude of the respondents appears to be unjust and arbitrary and displays a lack of application of mind in considering the service records of the applicant.

7. In view of the above facts, and having regard to the decision in Mansa Singh's case, we find that there is no other alternative but to quash and set aside the impugned order dated 29.8.1989. The applicant shall be deemed to be in continuous service till the date of his superannuation i.e. 31st July, 1992 till he attains the age of 58 years. He shall be entitled to all consequential benefits, including revised pension on the basis of his last pay which he would have drawn had he continued in service till the date of his superannuation. The respondents shall pay the aforesaid amounts within a period of three months from the date of receipt of a copy of this order. There will be no order as to costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

Infelips
(S. B. ADIGE)
MEMBER (A)