

16

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.1780/90

New Delhi, This the 24<sup>th</sup> Day of October 1994

Hon'ble Shri Justice S.C.Mathur, Chairman

Hon'ble Shri P.T.Thiruvengadam, Member(A)

Shri K.L.Kapur  
Retired Dy.Chief Engineer  
Northern Railway  
S/o Shri Ram Raksha Mal Kapur  
Aged 55 years,  
R/o B-2/94, Safdarjung Enclave  
New Delhi.

...Applicant

By Shri R.K. Kamal, Advocate

Versus

Union of India through:

1. The Secretary  
Railway Board  
Rail Bhavan, Rafi Marg  
New Delhi.
2. The General Manager  
Northern Railway  
Baroda House  
New Delhi - 1.

...Respondents

By Shri B.K.Aggarwal, Advocate

O R D E R

Hon'ble Shri P.T.Thiruvengadam, Member(A)

1. The subject matter under challenge in this application is order dated 26.7.1990 whereby the applicant has been retired from service.
2. At the relevant time the applicant was working as Dy.Chief Engineer, Northern Railway. The respondents issued the impugned order of the President dated 26.7.1990 retiring the applicant from service with effect from the date on which the order was served on him. It is the case of the applicant that he rendered dedicated, honest and faithful service through out his service career. In recognition

...2

of his meritorious service, he was given out of turn promotion from Group 'C' to Group 'B' and from Group 'B' to Group 'A'. He also received a number of Awards in appreciation of his commendable service from the higher authorities. It is also alleged that the out of turn promotions and Awards received by the applicant caused heart-burning among some of the persons affected by accelerated promotion of the applicant. According to the applicant those persons filed false complaints against the applicant with a view to tarnishing his image. It is stated that the false complaints lodged by his adversaries against him has resulted in issuance of 2 Memos of charge-sheets for major penalties. It is also alleged that the impugned order of compulsory retirement is not in public interest, but is a short cut to impose major penalty of compulsory retirement without complying with the provisions of Railway Service(Discipline and Appeal)Rules. The impugned order has thus been passed on non-existing facts because the suspicion cast upon the applicant's integrity has not yet been proved to be well founded in the disciplinary enquiry initiated against him and as such the same cannot be sustained.

3. The respondents have opposed this application. It has been stated that the right to retire a Government servant pre-maturely is an absolute one and the only requirement is that there should be a formation of opinion and in the present case the opinion has been formed in public interest and the requirement of the Rule has been strictly complied with, as such this application is not maintainable.

4. The law on the subject of compulsory retirement <sup>re-emphasised</sup> has recently been ~~by~~ by Their Lordships of Hon'ble Supreme Court in the case of Baikuntha Nath

Das & Anr. Vs. Chief District Medical Officer, Baripada reported in JT 1992(2) SC 1 paged 299. The Hon'ble Supreme Court has laid down the following parameters for judicial review in matters of compulsory retirement.

- (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 Govt on forming the opinion that it is in the public interest to retire a Govt servant compulsorily. The order is passed on the subjective satisfaction of the Govt.
- (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) malafide 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 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 Govt servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their

19

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 circumstance by itself cannot be basis for interference. Interference is permissible only on the grounds mentioned in (iii) above.

5. We now proceed to examine the arguments advanced by the learned counsel for the applicant, in the light of the law laid down by Their Lordships of Hon'ble Supreme Court in the Baikuntha Nath Das & Anr case, the relevant portion of which has been extracted in the preceding paragraph for convenience of reference.

6. The learned counsel for the applicant urged that the detractors of the applicant have systematically planned to ease him out of service by filing false complaint against him and getting the charge memos served upon him. The allegation of malafide is general and vague. No details as to the persons, who were affected by the accelerated promotions of the applicant have been given out in the DA. There is no tangible material as may support, the contention of the learned counsel for the applicant that the 2 Charge Memos served upon the applicant are the result of the machination of the adversaries of the applicant. There is absolutely no material from which a reasonable inference of malafide could be drawn. We, therefore, find no substance in the argument of the learned counsel for the applicant that the impugned order compulsorily retiring the applicant is the outcome of malafide.

7. The learned counsel for the applicant argued that the pre-mature retirement of the applicant is not in the public interest and that the same has been resorted to as a short cut to impose penalty without complying with the provisions of Discipline and Appeal Rules. It was stated that at the time when the impugned order was passed, two disciplinary proceedings were pending against the applicant. The respondents, it was submitted, instead of completing the disciplinary proceedings and passing orders on the basis of the the enquiry report, have hastened to pass the impugned order. Such action, in the circumstances, it was argued, is not maintainable. In support of this argument, the learned counsel has relied on the instructions issued by the department on 29.11.1976 as well as the decision of the Hyderabad Bench of the Central Administrative Tribunal passed in O.A. No.25/89 reported in 1993(1) ATJ page 332. In the said judgement, the Tribunal has held that the recourse to pre-mature retirement cannot be taken as a short-cut to disciplinary proceedings. So far the principles laid down in the decision relied by the learned counsel for the applicant is concerned, it is not in dispute. This principle, however, has no application to the facts of the case under consideration. In case relied upon by the learned counsel for the applicant, the report of the review committee was before the Tribunal. It was after perusing the remarks recorded in the report of the review committee, the Tribunal came to the conclusion that the Screening Committee had taken recourse to easing him out under FR(3) as a short-cut to continuing disciplinary proceedings. In the case under consideration, we have no material before us

to show that the impugned order has been passed as a short cut to impose major penalty of compulsory retirement. The reasons that weighed in the mind of the competent authority for arriving at the decision to compulsorily retire the applicant are discussed in the latter paragraphs. We also note that the departmental proceedings initiated against the applicant have not been closed after the retirement of the applicant.

8. It was next argued by the learned counsel for the applicant that the impugned order is based on non-existing facts in as much as the suspicion cast upon his integrity has not yet been established in the disciplinary proceedings initiated against him. It was also argued that there is absolutely nothing against the applicant in his service record as may indicate that the applicant has become a Dead-wood and as such his continuance in service is not in the public interest. In support of his argument, he has drawn our attention to para 4.1 of the O.A. wherein details of achievements of the applicant have been enumerated. The respondents have not disputed the facts contained in para 4.1 of the O.A with regard to the award, merit certificate, grant of advance increment, etc. to the applicant by different officials. <sup>only once</sup> In 1969 adverse remarks to the effect "If he applies his mind, he can produce desired result" were communicated. There is thus nothing efficiency-wise adverse against the applicant.

9. The respondents produced the file relating to the proceedings of the Review Committee for our perusal. On perusal we note that the applicant has been pre-maturely retired on the ground of his integrity

being doubtful. At page 14 of the noting side of the relevant file namely E(O)I-89/SR-10/39 on the subject "Review under rule 2046(h)-R II Shri K. L. Kapoor ....." it is mentioned that the applicant's vigilance record turned bad only afterwards. (i.e. after 1986-87). A large number of cases (7 in number) had come up against the applicant by July 1990. It was noted that in two cases disciplinary action for major penalty had been initiated in May/July 1989. Of the remaining five cases where investigations had commenced, in four cases the investigations had been completed. From amongst these 4 cases where the investigation had been completed only one case was closed and in the other cases some action was taken/being taken like bringing the lapses to the notice of the applicant<sup>or</sup> by issuing warning. After noting the above position it was quoted "In retrospect, it would appear that the officer, despite his outstanding abilities had a proclivity to be corrupt and, while he had earlier succeeded covering his tracks yet he could not do so during the subsequent years once the vigilance and CBI started pursuing the cases relentlessly".

10. In view of the above, we do not agree with the contention of the learned counsel for the applicant that the decision to retire the applicant prematurely was taken wrongly since the two specific cases of mis-conduct for which major penalty proceedings have been initiated formed the main grounds for such a decision.

11. A lot of stress was laid on behalf of the applicant on the principles laid down with regard to subjective satisfaction to the effect that

"Even if one of the grounds or reasons which led to the subjective satisfaction is non-existent or mis-concieved or irrelevant the order would be invalid". In this context the orders of Hon'ble Supreme Court in Zora Singh Vs J.M. Tandon and others(1971(3) SCC 834)and Dwaraka Prasad Sahu Vs State of Bihar and others (1975) 3 SCC 722 were referred to. These citations are not relevant to the application under consideration where the subjective satisfaction has been based on the consideration already pointed out by us. Even apart from this there is a later order of Hon'ble Supreme Court in State of UP Vs Chandra Mohan Nigam reported in 1977 SCC (L&S) 535 where the following principles specifically with reference to compulsory retirement has been mentioned:.

"If one out of the several reasons on which order of compulsory retirement is based is non-existent, the entire order is not liable to be struck down as invalid if the order could be *lawfully* passed on the basis of remaining reasons."

12. The learned counsel for the respondents argued that the pendency of the disciplinary proceedings need not be a bar to the invocation of the rule regarding compulsory retirement. He referred to the observation of Hyderabad Bench of this Tribunal's order in Dr. A Upendra Rao Vs Director RIL reported in 1989(4)(CAT) SLJ 115. It has been observed that so long as other material is available before the review committee pending disciplinary action need not be a bar.

13. We note that a <sup>similar</sup> question came up for consideration before Their Lordships of Hon'ble Supreme Court in Union of India and others Vs

Dulal Dutt page 406. The Calcutta Bench of this Tribunal has set aside the order of compulsory retirement of the respondent, Shri Dulal Dutt.

In the said case, the high level review committee had unanimously recommended the retention of the applicant firstly because his performance record has been quite good and secondly because there was no proven vigilance case leading to punishment. Therefore, the committee was of the opinion that the outcome of the more serious case now pending against him should be awaited. The Review Committee was of the opinion that the disciplinary proceedings started against the applicant from the vigilance angle should first be completed before any action is taken. The competent authority, however, did not agree with the recommendation of the Review Committee for the retention of the applicant and accordingly ordered that he should be removed from service. The SC reversed the judgement of the Administrative Tribunal and upheld the order of compulsory retirement passed in the said case. and held that the subjective satisfaction of the competent authority cannot be questioned.

14. The final argument of the learned counsel for the applicant based on the recommendation of the review committee was that no nexus had been established with the recommendation to public interest which the recommendation was supposed to cater for. Suffice it to say that the subject matter of the entire file is with regard to the invocation of the said rule which operates only for serving the public interest.

The order of termination clearly spells out that the compulsory retirement was being effected in public interest.

15. In view of the above, the OA is dismissed.  
There shall be no order as to costs.

*P. T. Thiruvengadam*  
(P.T.THIRUVENGADAM)  
Member (A)

*S. C. Mathur*  
(S.C.MATHUR)  
Chairman

LCP