

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.1906/90

New Delhi, dated the 10th Jan., 1995

CORAM

Hon'ble Shri S.R. Adige, Member (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Gobind Singh,
S/o Late Shri Dhan Singh,
Old No.96-ND and 262-ND
Police Station, Tuglak Road, New Delhi

... Applicant

(By Advocate Shri B.R. Saini)

v.s

1. Union of India through the Administrator/Lt. Governor, Union Territory of Delhi, Raj Niwas, Delhi
2. Delhi Administration, through the Secy.(Home) Old Sectt., Delhi
3. Shri Gur Charan Singh
Addl. Commissioner of Police,
(Previously ADC of Police)
Police Headquarters, I.P.Estate,
New Delhi.
4. Sh. Kartar Singh
Addl. Commissioner of Police,
(Previously ADC of Police)
Police Headquarters, I.P.Estate,
New Delhi.
5. Shri S.K.Jain, Dy.Commissioner of Police,
West District, Tilak Nagar, Police Stn.,
Tilak Nagar, New Delhi.
6. Shri Om Parkash,
Asstt. Commissioner of Police
(Previously S.H.O.)
Police Station, Tilak Marg, New Delhi

... Respondents

(By Advocate Shri Vijay Pandita)

JUDGMENT (ORAL)

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

V
✓

In this application, Shri Gobind Singh, ex-constable (Delhi Police) has impugned the order dated 6.9.90, retiring him from service upon attaining the age of 55 years under FR 56(J).

2. The applicant commenced his service as a constable in the Delhi Police on 6-2-1954, and was posted in the Delhi Armed Police upto 1.1.1986. The respondents have stated in their reply which has not been denied by the applicant in his rejoinder, that when he was posted in D.A.P., he was placed under suspension and two years approved service were forfeited permanently vide order dated 28.2.1986 for unauthorised absence and the suspension period was also treated as not spent on duty. He was also awarded 15 days P.D. for slackness in the duty on 18.8.1963, besides censure for remissness in the discharge of his duty on 21.8.1965. After two or three further postings, he was transferred back to DAP 3rd Bn, on 11.6.74 but did not report there and absented himself, upon which he was placed under suspension and proceeding against departmentally, and was eventually ordered to be dismissed from service vide order dated 3.12.1975, which he challenged in writ petition in the Delhi High Court, which was transferred to this Tribunal. The Tribunal quashed the dismissal order vide judgment dated 6.3.1987, but left it open to the disciplinary authority to consider the

20

Ar

quantum of punishment to be awarded to the applicant in view of the finding of guilt. Thereupon, the applicant was reinstated in service w.e.f. 6.3.1987, and was asked to show cause ~~notice~~ why 4 years approved service should not be permanently forfeited entailing reduction in his pay, and also why the suspension period from 28.10.1974 to 2-12-1975 to be treated as not spent on duty and the period from 3.12.75 to 3.3.1987 be not treated as dies non.

3. The applicant submitted his show cause ~~notice~~ ^{reply and} which was considered by the respondents and the punishment order proposed in the show cause notice was confirmed. But later on upon his appeal, the punishment order of forfeiture of 4 years service permanently was reduced to forfeiture ^{in of 4 years service} entailing ^{pay in} proportionate reduction.

4. The applicant was promoted as Head Constable w.e.f. 27.1.89 on purely temporary and ad hoc basis. It appears that soon after, the respondents reviewed the case of those officials who had attained the age of 55 years or completed 30 years of qualifying service on 31.3.90, and upon the recommendation of the screening committee, which was endorsed by the review committee, the applicant was

12

compulsorily retired, upon attaining the age of 55 years under FR 56(J) by the order of the Addl. Deputy Commissioner of Police dated 6-9-90, against which this application has been filed.

5. The first ground taken by the applicants counsel, Shri Saini is that as the applicant had been promoted as head constable on officiating basis, ^{the} ruling in the case of UOI v K.R. Tahilianni (1987) 3 SCC 309 operates, to bar the applicant ^{from} being compulsorily retired, Shri Pandita, counsel for the respondents has, however, invited our attention to the ruling in A.L.Ahuja v.UOI 1987(3) SCC 604, paragraph 11 of which ~~states~~ ^{holds} that the rationale of the decision in Tahilianni case (supra) is not correct and Rule 56(I) applies even in cases of persons promoted on officiating basis. In the circumstances, this argument fails.

6. The second argument advanced by Shri Sahi is that the competent authority, namely, the appointing authority i.e. Addl. Deputy Commissioner of Police, in accepting the recommendations of the screening committee, which were endorsed by the review committee, did not independently apply his mind. The purpose of having a screening committee to examine the case of persons whom the authorities consider fit to be compulsorily retired, and a review committee to scrutinize the recommendations of the screening committee before the competent authority takes the final decision, is primarily to ensure that the case of compulsory retirement is dealt with at more than

one level, so that no Govt. servant is deprived of the remaining years of his service through hasty, illegal, arbitrary, or malafide action, and every such decision is a well considered one. In the present case, from the preceding paragraphs it is clear that the applicant did not enjoy a good record of service, and if under the circumstances, the screening committee held that he was not fit to continue in service beyond 55 years, and their recommendations were endorsed by the review committee, such recommendations cannot be faulted, and if the competent authority ~~ex~~ ⁱⁿ facie did accept these recommendations, it cannot be held that he had not applied his mind independently to the facts of the case. Merely, because the competent authority accepted the recommendations of the screening committee duly endorsed by the review committee, does not imply that there was no independent application of mind on his part. In the circumstances, this argument also fails.

7. The next argument advanced by Shri Saini is that there were no materials on record for the respondents to hold that the applicant was unfit to continue in service beyond 55 years, and in this connection he has invited attention to the commendation certificate received by the applicant dated 16.2.1989, and also to the fact that he was promoted as head constable about $1\frac{1}{2}$ years prior to the date of his compulsory retirement. It is true that the applicant received a commendation certificate dated 16.2.1989 (it is alleged that other commendations / awards were also received but

no supporting evidence has been filed) but that was in respect of a specific act performed by him, and cannot be said to nullify the applicants previous unsatisfactory service record a reference to which has been made in paragraphs 2 and 3 above.

8. It is true that ~~that~~ the applicant was promoted as head constable about $1\frac{1}{2}$ years prior to the date of compulsory retirement, but that promotion was also on purely temporary and adhoc basis, and here again it cannot be said to nullify the applicants previous unsatisfactory record of service. The fact that the applicant who commenced service as a constable on 6-2-54 during a career spanning 36 years ~~secure~~ could / only one promotion , and that too as Head constable on purely adhoc and temporary basis towards the fag end, is sufficient proof that the respondents correctly judged him to be "dead wood" and if under the circumstances, having reviewed his entire record of service, held that he was unfit to continue further in service and should be compulsorily retired upon attaining the age of 55 years under FR 56(J), their decision cannot be faulted.

9. Shri Saini has also alleged that the action of the respondents ~~for prematurely retirement~~, the applicant was malafide, but this allegation is vague and general in nature, and no malafide has been ~~alleged~~ ^{furnished} against any specific individual, nor have any cogent reasons been given why any of the respondents would have been inimically inclined towards the applicant, to want to cause him harm. Hence this argument also fails.

15

10. In the result we see no good reason to interfere in this matter and this application fails. It is accordingly dismissed. No costs.

Lakshmi Swaminathan

(Lakshmi Swaminathan)

✓

Member (J)

Arulige

(S.R. Arulige)

Member (A)

sk