

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 194/90
T.A. No.

199

DATE OF DECISION 24.8.1990.

Shri Sajjan Singh	Petitioner Applicant
Smt. Sarla Chandra	Advocate for the Petitioner(s) Applicant
Versus	
Dir. Gen., Medical Services, Army Headquarters	Respondent
Shri M.L. Verma	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The grievance of the applicant pertains to the impugned order dated 10.11.1989, whereby he has been compulsorily retired from Government service. The application came up for admission on 6.2.1990, when notice was directed to be issued to the respondents on admission and interim relief. The Tribunal also passed an ex parte interim order restraining the respondents from giving effect to the impugned order dated 10.11.1989. The said order has been extended since then till the case was finally heard on 8.8.1990. The application has not been admitted. The pleadings are complete and we feel that it could be disposed of at the admission stage itself.

2. The applicant was appointed as a Lower Division Clerk in 1958 in the Office of the respondents. In 1968, he was promoted as Upper Division Clerk in the same office. There is only one post of Clerk in the Station Health Organisation in which the applicant has worked. He completed 30 years of service on 21.2.1988.

3. The impugned order dated 10.11.1989 reads as follows:-

"NOTICE FOR PREMATURE RETIREMENT"

1. The review committee of Army H Q review the case of you to assess your suitability for your further retention in service on completion of 30 years of service. After a thorough examination of service record of the individual as reflected in the ACRs and based on the recommendation of the Review Committee Rajya Raksha Mantri has accepted the premature retirement from service.

2. In view of the above, you are hereby issued the notice intimation your premature retirement within three months of issue of this letter."

3. The applicant made a representation against the impugned order on 28.11.1989 to which he did not receive any reply. He filed the present application in the Tribunal on 31.1.1990.

4. The contention of the applicant is that the impugned order is arbitrary, and that his service record and performance is not such as to warrant his compulsory retirement.

5. The respondents have stated in their counter-affidavit that the applicant's work was mostly restricted to typing only. They have contended that the impugned order was passed in accordance with the guidelines issued by the Government in this regard.

6. We have gone through the records of the case and have considered the rival contentions. The legal position in regard to the power of the Government to compulsorily

retire a Government servant, is well-settled. The appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. That authority should form the opinion bona fide. The opinion should not be formed, or the decision should not be based on collateral grounds. It should not be an arbitrary decision.

7. In the instant case, the impugned order has been passed by taking into account the overall performance of the applicant. The respondents have contended that this Tribunal should not sit in judgement over the findings of the competent authority. The applicant has vaguely alleged bias on the part of the respondents which is reflected in his ACRs for the years 1986-87. In our opinion, he has not substantiated allegations of bias or mala fides against the respondents.

8. The impugned order refers to the Review Committee having assessed the suitability of the applicant and recommended premature retirement of the applicant from service. This Tribunal would not sit in judgement over the recommendation² of the Review Committee which is based on the overall performance of the applicant.

9. There is, however, another aspect of the matter. The premature retirement of Government servants is regulated by the Office Memorandum dated 5th January, 1979 issued by the Ministry of Home Affairs (see Swamy's Pension Compilation, 11th Edition, pages 336-343). The said O.M. states that in order to ensure that the powers vested in the appropriate authority are exercised fairly and impartially, it has been decided to lay down the procedures and guidelines for

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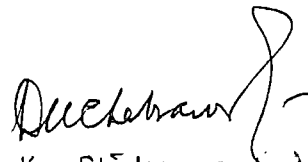
reviewing the cases of Government employees with a view to their retention in Government service or their premature retirement. According to the criteria laid down in the said O.M., Government employees who are found to be ineffective, will be retired. The basic consideration in identifying such employee, should be the fitness/competence of the employee to continue in the post which he is holding. If he is not found fit to continue in his present post, his fitness/competence to continue in the lower post, from where he had been previously promoted, should be considered. In case the appropriate authority comes to the conclusion that the officer is not fit for being retained in the present post but could be retained in the next lower post from which he was promoted, a notice in the prescribed form should be served in such a case on the employee retiring him from service in pursuance of the provisions of the relevant rules. Simultaneously, it may be explained to him in a covering letter that his continuance in service beyond the age of 50/55 years or after the completion of 30 years of service, as the case may be, could be considered if he is willing to revert to the lower post held by him previously. In case he indicates his willingness to work in the lower post and gives a written request for being so reverted, he may be retained in service and continued in the lower post.

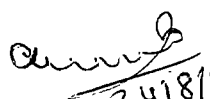
10. There is no indication in the records of the case that the procedure mentioned above was followed by the appropriate authority in the instant case. The respondents have admitted in their counter-affidavit that the main duty of the applicant is to do typing in this office. They have not alleged that he is deficient in doing that job.

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11. In the conspectus of the facts and circumstances of the case, we are of the opinion that the impugned order of premature retirement of the applicant passed on 10th November, 1989, is not legally sustainable. We do not, however, propose to quash the same. The ends of justice and equity will be met if the case is remitted back to the appropriate authority to consider the suitability of the applicant for his continued appointment in the lower post of L.D.C. In case he is found suitable to hold that post and the applicant gives a written request for being so reverted, the respondents shall retain him in service and continue him in the lower post of L.D.C. till he attains the age of superannuation.

12. The respondents shall comply with the aforesaid directions within a period of three months from the date of communication of this order. The interim order already passed on 6.2.1990, will continue to be in operation till the respondents comply with the aforesaid directions. The application is disposed at the admission stage itself with the aforesaid directions. There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member
24/8/1990


24/8/90
(P.K. Kartha)
Vice-Chairman(Judl.)