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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1971/1990.

DATE OF DECISION: 7-6-1991.

Shri Hira Singh Jyotiyana

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APPLICANT.

V/s.

Union of India & Others

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RESPONDENTS.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri B.S. Mainee, counsel for the applicant.

Shri S.N. Sikka, counsel for the respondents.

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

The applicant, who was posted as Chief Booking Supervisor, Western Railway, Berawar, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, in which he has assailed order dated 27.6.1990 (Annexure A-1 to the O.A.), by which he was given notice that he, having completed thirty years of service qualifying for pension on the 7th March, 1990, shall retire from service after the expiry of three months and that if he so desires, he may represent in writing to the Divisional Rail Manager within three weeks from the date of service of the notice on him. He has prayed that the above impugned order may be quashed with all consequential benefits.

2. A Bench of this Tribunal by its order dated 25.9.90 restrained the respondents as an interim measure from implementing the above order. The interim order was extended from time to time and is still in operation.

3. Briefly stated, the relevant facts are that the applicant was appointed as an Assistant Coaching Clerk in terms of letter dated 22/23-1-1960 (Annexure A-2) and was promoted as Senior Booking Clerk, Head Clerk and finally as Chief Booking Supervisor with effect from 1.1.1984. He was issued Commendation Certificate by the Western Railway on 16.4.84 (Annexure A-3). According to the applicant, he was

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served with a charge-sheet in 1987, in pursuance of which, his increment was stopped for one year, but he did not receive any reply to the appeal preferred by him against the aforesaid punishment. According to the respondents, however, a charge-sheet dated 22.5.87 was served upon him, but he did not submit his defence and punishment of withholding of one set of privilege pass in the calendar year 1988 was imposed on him vide communication dated 11.11.87, but he did not prefer any appeal against the above punishment. Again, according to the applicant, he was communicated, vide communication dated 2.1.1989 (Annexure A-4) some adverse remarks in his confidential report for the year 1987-88 and that he submitted a representation against the aforesaid adverse entries on 1.2.1989 (Annexure A-5). However, the respondents have contended that no representation dated 1.2.1989 against the aforesaid adverse entry was received by the office. Further, the applicant sent an appeal to the Divisional Railway Manager, Ajmer on 5.7.90 against the impugned notice of 27.6.90. A copy of the appeal has been annexed as Annexure A-6. The appeal was acknowledged by the Divisional Office, Ajmer, vide letter dated 11.7.90 (Annexure A-7), in which it is also stated that the same will be considered by the competent authority and decision thereon will be advised to him in due course. The applicant has contended that no reply to his appeal has been received by him. The respondents, in the counter reply, have stated that the appeal dated 5.7.90 has been submitted for review at Headquarters level by the next higher authority and, as such, no reply has been given to the applicant. Counter-reply was filed on 14.12.1990 and till the date of hearing arguments on 3.6.1991, no further development in the matter was brought to our notice.

4. We have perused the material on record and have also heard the learned counsel for the applicant. None appeared for the respondents for making oral submissions. The respondents also did not produce the minutes of the meeting of the Review/Screening Committee, the A.C.R. of the applicant as also the C.

decision taken on his representation against the impugned order, if any, as directed by us in our order dated 14.2.91 and in spite of ample opportunities allowed to them for this purpose.

5. One of the grounds urged before us on behalf of the applicant was that the impugned order giving three months' notice for premature retirement has been passed by an authority which is lower than his appointing authority. This argument was sought to be substantiated by stating that the applicant was appointed in 1960 by the Divisional Superintendent (E), which was equivalent to the Divisional Railway Manager, while the impugned order has been passed by the Additional Divisional Rail Manager, who was lower in rank than the appointing authority. The respondents, in their counter reply, have controverted this contention. We also find that the appointment order of the applicant was issued by the Divisional Commercial Superintendent (E) and not by the Divisional Superintendent. This is clear from Annexure A-2. Divisional Commercial Superintendent cannot be said and has not been shown to be higher in rank than the Additional Divisional Rail Manager. As such, this contention cannot be upheld.

6. Another main ground taken by the applicant is that the punishment imposed on him in 1987 and the adverse entry given to him for the year 1987-88 could not have been taken into account before passing the impugned order as his appeal against the above two orders was still pending. It is true that an adverse entry communicated to a Government servant cannot be considered for purposes of promotion, confirmation, crossing of Efficiency Bar, premature retirement, etc., if a representation / appeal made against such an adverse remark has been filed but has not been disposed of. However, in the case before us, the respondents, in their counter reply, have categorically denied that any appeal either against the punishment imposed in 1987 or against the adverse remarks for

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the year 1987-88 communicated to him vide letter dated 2.1.1989 was received by them. In his rejoinder, the applicant has not given any worthwhile denial of the above contention of the respondents and he has also not filed or shown to us any proof in regard to the above representation / appeal having been received by the respondents. In these circumstances, we cannot come to any conclusion whether the appeal, as contended by the applicant, had in fact been made by him and received by the respondents and that the same was still pending for disposal.

7. Another main ground taken by the applicant is that the impugned order cannot be said to have been passed in the public interest and no grounds to that effect have been informed to him. He has sought to substantiate this contention by stating that his work had been satisfactory, he was given a commendation certificate in 1984, there was no public complaint against him, no vigilance case was proved against him, he is a proven honest employee, who was fit to perform his duties efficiently and that his appeal against the adverse entries for the year 1987-88 and the punishment imposed on him in 1987 had not been disposed of. On the other hand, the respondents, in their counter reply, have stated that "in his service, he has been awarded 31 punishments including recent cases of 1986-87 and 1987-88. On 14 times he has been punished for careless working and 5 times he has been punished for carelessness and inefficient working. 2 times he has been punished for careless working and negligent duty. Once he has been punished for taking excess fare by the passenger. Once he has been punished for careless working pilferage of M/part values Rs.823/- from one case. Once he has been punished for careless working and held responsible for shortage of one bundle brass wares. Again he has been punished for repeating same offence for which a claim of Rs.1043/- has been paid. Once he has been punished for careless working for which Rs.1096/- was paid as claim for loss of cash. Once he has been punished for refusing ticket to one passenger and abused him. Once he has been for

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failing to maintain integrity in that he gave wrong statement. Three times he has been punished in other cases." It may be stated here that the respondents, in their counter reply, have not mentioned the periods during which the above punishments were imposed on the applicant except the punishment imposed in 1987 and the adverse entries for the year 1987-88. If these punishments had been imposed on the applicant before he was promoted as Chief Booking Supervisor with effect from 1.1.1984, it will have to be considered whether these punishments could again be taken into account for arriving at the conclusion as reflected in the impugned notice.

8. Another ground taken by the applicant is that the fitness of the applicant for a lower post was not considered when it was decided to retire him from the post which he was holding. The respondents, in their reply, have stated that there is no provision for considering the employees in the lower post. The relevant provision in this regard in the Railway Board's letter dated 15.11.79 (Annexure A-8) had been deleted vide GM(E)/CCG's confidential letter No. EP/949/0 Vol. III, dated 5.2.90. However, a copy of the above letter dated 5.2.90 has neither been filed nor produced and we are, therefore, not in a position to say whether the rules or the instructions on the subject mandated consideration of the applicant for the lower post.

9. The applicant has also contended that the impugned order of premature retirement has been issued in violation of the Railway Board's confidential letter No. E(P&A)-I-77/RT-53, dated 15.11.1979 (Annexure A-8 to the O.A.). In the above letter, consolidated instructions were issued for processing the cases of premature retirement of Railway servants. The object of issuing these instructions is stated to be to ensure that the powers vested in the appropriate authority are "exercised fairly and impartially and not arbitrarily". These instructions, inter-alia, provide for constitution of Committees for each Department on each Zonal Railway administration as shown in Annexure-I to the aforesaid instructions to which all such cases shall be referred

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for recommendation as to whether the officer concerned should be retired from service in the public interest or whether he should be retained in service. The criteria to be followed by these Committees is also laid down and according to the criteria, an officer whose integrity is doubtful or officers who are found to be ineffective, will be retired. It is further provided that "While the entire service record of an officer should be considered at the time of review, no officer should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years or where he has been promoted to a higher post during that 5 years period, his service in the higher post has been found satisfactory." It is also provided that "No officer should ordinarily be retired on ground of ineffectiveness, if in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case." This clause is, however, not applicable to the case of the applicant as he has more than one year for retirement on superannuation. On receipt of the recommendations of the Committee, in every case where it is proposed to retire a Railway servant, the appropriate authority is required to record in the file that it has formed its opinion that it is necessary to retire the Railway servant in the public interest. The appropriate authority should bonafide form an opinion that it is in public interest to retire the officer and this decision should not be an arbitrary decision or should not be based on collateral grounds. The consolidated instructions also stipulate the procedure for consideration of representations made by a Railway employee where/he has been served with a notice / order of premature retirement, within three weeks from the date of service of such notice/order. On receipt of such a representation, the administration is required to examine the same and this examination should be completed within two weeks from the date of receipt of the representation. Then the case is required to be placed before the appropriate Committee for consideration.

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The composition of the Committee for this purpose has also been indicated in Annexure-II to those instructions. The said Committee is required to make its recommendations on the representation within two weeks from the date of receipt of the reference from the administrative authorities concerned, and the authority empowered to pass final orders on the representation should pass its orders within two weeks from the date of receipt of the recommendations of the Committee subject to the condition that approval of the Ministry of Railways is necessary where the appropriate authority proposes to reject the representation / appeal against the premature retirement. Para 7 in Part III of these consolidated instructions provides as below: -

"(7) Representations from railway employees who have been served with a notice / order of premature retirement, but have obtained stay order(s) from a court against the order / notice of premature retirement, need not be considered by the administration, nor sent up to the Committee until the disposal of the court case. Thereafter, the cases may be examined as outlined above, also taking into account any material of a substantive nature that may feature in the court's judgement."

It is seen from the above instructions in para 7 of part III that the representation from a railway employee against the notice / order of premature retirement is not required to be considered by the administration, nor sent up to the Committee, until the disposal of the court case in case the employee concerned has obtained stay order from a court against the order, notice. After disposal of the court case, the representation is required to be considered, as prescribed.

10. The appeal against the impugned order was filed within the prescribed period of three weeks. The appeal has not been disposed of is a fact admitted by the respondents in the counter reply. May be, this has been kept pending in view of the instructions reproduced above, though the respondents have not stated so in their counter reply. What they have stated is that the Railway Board's letter dated 15-11-79 "has since been modified vide Rly. Board letter No. E(P&A) I-77/RT-53, dated

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1.11.85 received under GM(E) CCG's letter No. Confidential EP/949/O Vol. III dated 20.11.85, again Board's letter of even no. dated 10-4-86 received under GM(E) CCG letter dated 1-8-86 and again Board's letter No. E(P&A)I-87/RT/40 dated 17-10-89 received under GM's letter No. dated 6-11-89.¹¹ Copy of none of these letters by which the consolidated instructions issued by the Railway Board in their confidential letter dated 15-11-79 are said to have been modified, has either been filed or produced. It was incumbent on the respondents to do so. They have also not filed or produced, as already stated above, the minutes of the Review Committee, the ACRs of the applicant and the decision of the representational committee which might have considered the representation / appeal of the applicant. In these circumstances, we hold that the procedure prescribed in the instructions issued by the Railway Board, on the face of the record before us, does not appear to have been followed. As such, we do not consider it appropriate at this stage to give any findings on the merits of the rival contentions of the parties, particularly in regard to the contention whether the bonafide opinion was formed and recorded in the relevant file by the appropriate authority before it was decided to issue the impugned order / notice dated 27th June, 1990 and whether on the basis of the various punishments awarded to the applicant during his service career, the authority could arrive at a conclusion that the applicant had become ineffective. Similarly, we cannot go into the merits of the adverse remarks given to the applicant for the year 1987-88, which were communicated to him, by the letter dated 2-1-89 for the simple reason that the above communication is not under challenge in this O.A. and the same is also time-barred.

11. The applicant continues to be in service under the interim orders passed by the Tribunal. His representation / appeal dated 5.7.90 is also admittedly still pending for disposal. In view of this, as also in the light of the foregoing discussion, the O.A. is disposed of in terms of the directions U.s.

that the applicant's representation dated 5-7-90 and his further supplementary representation dated 13-8-90 in continuation of the earlier representation against the impugned order / notice for premature retirement dated 27-6-90 should be disposed of by the respondents in accordance with the procedure prescribed, within a period of three months from the date of receipt of a copy of this order. Until this is done and for a further period of 30 days, the impugned order shall not be given effect. After the orders on his representation(s) are communicated to the applicant, and if he is aggrieved by the orders passed on his representation(s), he shall be free to approach this Tribunal by filing a fresh C.A. in accordance with law, if so advised. In the facts and circumstances of the case, we leave the parties to bear their own costs.

(Signature)
(P.C. JAIN) 7/491
Member(A)

(Signature)
(RAM PAL SINGH)
Vice-Chairman(J)