

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

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O.A. No. 2009/90
T.A. No.

199

DATE OF DECISION 27.2.98

Ms.Kiran Devi	Petitioner
Sh.B.S. Mainee	Advocate for the Petitioner(s)
Versus	
UOI M/O Railways	Respondent
Sh.J.D.Jain Sr.counsel with Sh P.S. Mahendru.	Advocate for the Respondent

CORAM

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

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

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O.A. 2009/90

New Delhi this the 27 th day of February, 1998

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

Smt. Kiran Devi,
widow of Shri Babu Ram Jatav,
Ex-Chief Travelling Ticket Inspector,
N.E. Railway, Kasganj,
R/o 1068, Gali Shivalya,
Mohalla Pench, Kasganj,
Distt. Etah.

.... Applicant.

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
Railway Board, Rail Bhawan,
Raisina Road,
New Delhi.
2. The General Manager,
N.E. Railway,
Gorakhpur.
3. The Divisional Railway Manager,
N.E. Railway,
Izatnagar.

... Respondents.

By Advocate Shri J.D. Jain, Sr. Counsel with Shri P.S. Mahendru.

O R D E R

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

This application has been filed by the widow of Shri Babu Ram Jatav, ex-Chief Travelling Ticket Inspector as his legal representative impugning the order dated 6.1.1986 passed by the respondents compulsorily retiring him from service. She has also challenged another order passed by the respondents dated 3.6.1997 by which the order of Respondent 2 dated 22.5.1997 had been communicated to the applicant.

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2. The ~~applicant~~^{ex-employee}, Shri Jatav, had filed an earlier application (O.A. 919/88) in which it has been observed that the order of ~~the~~ premature retirement was served on the applicant on 4.4.1989, as he had alleged that he had never been served with a copy of the same, and as such he could not prefer any appeal or representation and the respondents were directed to entertain the appeal, if filed by him within four weeks and dispose of the same on merits within a further period of eight weeks. In the amended O.A., the applicant has stated that her husband, Shri Jatav, had preferred an appeal to the respondents on 24.4.1989 but while the appeal was still pending, he expired on 18.11.1989. Thereafter, the widow had filed this O.A. on 17.9.1990 as his legal heir.

3. Shri Jatav while working in Izatnagar Division was promoted to the post of Chief Traveling Ticket Inspector (CTTI) w.e.f. 1.1.1984 by order dated 16.4.1984. After working only for 15 days at Kasganj, he was ordered to be posted temporarily at Fatehgarh by order dated 30.5.1984 against which transfer he had submitted representation on 31.5.1984. Shri B.S. Mainee, learned counsel for the applicant, has submitted that instead of considering the representation of late Shri Jatav, the competent authority passed an order for his suspension on 3.7.1984 which, he claims, is absolutely illegal and vindictive as no reasons have been given for his suspension. Against this suspension order also, Shri Jatav filed an appeal for revocation of the same on 13.7.1984, and 11.10.1984, which was revoked by the Addl. Divisional Railway Manager w.e.f. 9.11.1984. The Sr. DCS, according to the learned counsel, therefore, became

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more revengeful and passed a punitive order transferring Shri Jatav permanently from Kasganj to Fatehgarh. He claims that this transfer order was a punishment order passed against the Railway Board's order dated 14.1.1975 which provides that transfer of Scheduled Caste employees, to which community the deceased employee belonged, should be rare and for strong reasons only. Shri Jatav had also preferred an appeal against this transfer order on 20.11.1984 followed by reminders. He has stated that since his appeal was pending, he continued to work at Kasganj. Shri Jatav has submitted that since there was no reason for his suspension between 3.7.1984 and 8.11.1984, he is entitled to be paid full salary and not merely subsistence allowance and sent a notice in this regard on 1.4.1985. To this he states that he was again suspended w.e.f. 17.5.1985 without giving any reasons by orders on the same date. He had sent ^a telegram to the Addl. DRM, Izatnagar and the Minister of Railways against his suspension on 18.5.1985 and also an appeal to the Addl. DRM, Izatnagar on 23.5.1985. Shri Jatav also sent appeal to the Minister on 3.6.1985. By letter dated 1.7.1985, the senior DCS Izatnagar communicated adverse entries in his ACR for the period ending 31.3.1985. Shri Mainee, learned counsel, has submitted that the communication of the adverse remarks had not been done in accordance with the existing instructions as only the adverse part was communicated and not the entire remarks. Against the adverse remarks in his confidential report, the employee had submitted an appeal on 8.7.1985 but according to him no reply was given. He has, relying on the judgement of the Supreme Court in **Gurdial Singh Fizi Vs. State of Punjab** (1973 (3) SCR 518), submitted that the adverse entries in the confidential report could not be taken into

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consideration where appeal against the said entry had not been decided. The suspension order dated 17.5.1985 issued against Shri Jatav was revoked on 12.7.1985 by the senior DCS, Izatnagar. The learned counsel submits that a major penalty charge-sheet was issued on 31.7.1985 by the Sr. DCS, who was not the competent authority to issue the same. The deceased employee had submitted his written statement dated 14.8.1985. According to the applicant, no inquiry was held although the I.O. had been nominated. However, in spite of several reminders, the respondents have not replied to his various representations. Finally, the respondents had issued the impugned order dated 6.1.1986 informing him that he was being prematurely retired from service w.e.f. 7.4.1986. Against this notice, he states that he had also preferred an appeal on 11.11.1986. Thereafter, the respondents cancelled the chargesheet which was issued to the late employee on 21.7.1987 (Annexure A-38). According to him, the notice dated 6.1.1986 prematurely retiring him from service was not served on him which had been dealt with in the order of the Tribunal in O.A. 919/88 (supra). After his death, the applicant has filed this application.

4. Shri B.S. Mainee, learned counsel, has impugned the aforesaid orders on several grounds, namely, that (1) they have been passed with mala fide intention at the instance of the Sr. DCS, Izatnagar who was prejudiced against Shri Jatav while working at that place; (2) The learned counsel has stressed on the fact that as the work was found to be satisfactory, he had been given promotion in the grade of Rs.700-900 w.e.f. 1.1.1984; (3) He has also submitted that the adverse entries made in his C.R. for the period 1984-85 cannot be taken into consideration by the

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respondents or by the Review Committee because the appeal was pending against the said entry which had not been disposed of by the appellate authority; (4) The impugned orders have been passed to punish Shri Jatav for his failure to carry out his transfer orders to Fatehgarh although the orders were against the Railway Board's instructions; (5) There was no material before the Review Committee to justify premature retirement of late Shri Jatav especially when he has been promoted w.e.f. 11.1.1984; (6) He could not have been prematurely retired for which major penalty charges were pending against the deceased and the impugned compulsory retirement order had been passed as a short cut method which was, therefore, illegal; (6) The order had not been passed by the General Manager, who was the competent authority; and (7) As per the Government of India instructions since the applicant had been promoted to a higher post as CTTI before compulsorily retiring him from service, he ought to have been considered for the lower post which has not been done in this case. For these reasons, the learned counsel for the applicant has urged that the impugned order dated 6.1.1986 prematurely retiring the applicant's husband and the appellate authority's order dated 22.5.1997 may be quashed and set aside. He has relied on *Baikunth Nath Dass Vs. Chief DMO, Baripada* (AIR 1992 SC 1020), *S. Ramachandra Raju Vs. State of Orissa* (AIR 1995 SC 111), *Dalip Singh Vs. State of Punjab* (AIR 1960 SC 1305), *Moti Ram Vs. North Eastern Frontier Railway* (AIR 1964 SC 600), *Brij Mohan Singh Chopra Vs. State of Punjab* (ATR 1987(1) SC 513) and *D.C.Limbachia Vs. Union of India & Ors.* (ATR 1991 (1) CAT 347).

B.

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5. The respondents have filed their reply and we have also heard Shri P.S. Mahendru, learned counsel. According to them, the alleged appeal dated 24.4.1989 filed by the employee is a fabricated one as they have never received such an appeal. They have also submitted that no appeal was preferred by Shri Jatav nor was any received by the respondents in pursuance of the Tribunal's order in O.A 919/88 dated 4.4.1989. Therefore, they have submitted that the present O.A. is not maintainable and is liable to be rejected on this ground alone. They have also taken another preliminary objection that the present O.A. which has been filed by the widow of the deceased employee is misconceived as she has no locus standi to file the O.A. on behalf of the deceased employee. Shri Mahendru, learned counsel, has also submitted that the verification signed by the widow regarding the facts stated in the O.A. as being correct to the best of her knowledge are patently incorrect as she was not the recipient of the orders issued by the respondents or party to the actions for which Shri Jatav had been proceeded against by the respondents.

6. The applicant has filed a rejoinder in which he has more or less reiterated the averments made in the application.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. Before dealing with the merits of the case, we shall take up the preliminary objections taken by the respondents.

Y.S.

8. In view of the order dated 5.10.1990, the preliminary objection taken by the respondents regarding jurisdiction of this Bench to deal with the case is without any basis and is, therefore, rejected.

9. In **Shah Jahan Begum Vs. Union of India** (1988 (8) ATC 813), the application was filed by the widow of an employee who was working in the Railways against the order of removing him from service, after his death. The applicant had challenged the order of removal from service of her husband on the grounds, inter alia, that even assuming ^{that is} the charge is held proved, the punishment held against the applicant is wholly disproportionate to the allegations of misconduct and the application was allowed directing certain amounts due to the applicant to be paid to her. In another case **Smt. Kamla Devi Vs. Union of India & Ors.** (1989(9) ATC 49), the applicant, widow of late Shri Chauhan, who had worked as Telephone Operator, had filed the application for payment of pay and allowances for certain periods, recalculation of pension, payment of GPF and Group Insurance amounts, appointment of one dependent of the deceased official in the department on compassionate ground, and compensation. That case was also decided on merits and directions were given to the respondents in respect of payment of pecuniary benefits, including gratuity and encashment of leave and all payments admissible to the applicant under the rules to be paid ^{to her} (see also **P.R. Soman and Anr. Vs. Anuradha and two Ors.** (1988(6) ATC 173).

Y.S.

10. Having regard to these judgements, since the applicant in the present case is admittedly the widow of late Shri Jatav who was employed with the respondents and against whom the impugned order of premature retirement dated 6.1.1986 had been passed and who had since expired, and if the application succeeds, she would be entitled to be paid monetary benefits, including pay and allowances due to her husband, we find no infirmity in the application and accordingly reject the preliminary objections on this account.

11. O.A. 919/89 was filed by the employee Shri Babu Ram Jatav which was disposed of by the Tribunal's order dated 4.4.1989. In that case also, the applicant's counsel had taken a plea that the impugned order of premature retirement dated 6.1.1986 had not been received by the applicant and as such he could not prefer any appeal or representation as prescribed under the rules. Accordingly, the Tribunal had directed that a copy of the order of premature retirement should be served on the applicant on that date. The respondents were further directed to entertain the appeal, if the same is filed within 4 weeks from today i.e. 4.4.1989. It was to be disposed of by the competent authority within 8 weeks from that date.

12. This O.A. has been filed on 17.9.1990 by the widow of the employee as it is stated that the applicant has expired on 18.11.1989. On merits the respondents have denied the allegations made by the applicant and submitted that the impugned order has been passed in accordance with the rules. They have submitted that the adverse entries in the C.R.s. are not appellable. They have also submitted

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that Shri Jatav had completed 55 years of age and in accordance with Paragraph 2046 of the Railway Establishment Code (Vol.II) his case was reviewed and thereafter the order prematurely retiring him from service w.e.f. 7.4.1986 was passed by order dated 6.1.1996 giving him three months notice, in public interest. They have submitted that this order was sent to him but as he was not available, it was pasted on the notice board in the presence of two witnesses at Kasganj station. According to them, he had submitted no appeal against the premature retirement, and the order dated 6.1.1986 has, therefore, become final and binding. In the circumstances, they have submitted that the O.A. may be dismissed.

13. The impugned order is dated 6.1.1986. As per the order of the Tribunal in O.A. 919/88 dated 4.4.1989, the applicant was to file an appeal, which the respondents were required to dispose of within the time prescribed therein. The respondents have submitted that no appeal was filed which has been denied by the applicant stating that her husband had sent an appeal dated 24.4.1989 addressed to the General Manager, Gorakhpur. The Tribunal by order dated 31.1.1996, after noting these facts, in the interest of justice, had directed that affidavits should be filed by the parties about sending a receipt of the appeal. However, by order dated 30.12.1996 after scrutinising the records submitted by the parties, the Tribunal directed that in the background of the earlier order dated 4.4.1989 and in the interest of justice, the respondents should dispose of the appeal filed by way of representation by Shri Jatav dated 22.7.1989 to the Chairman, Railway Board with intimation to the applicant. In pursuance of this order, the respondents

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have disposed of the appeal by their order dated 22.5.1997 (Annexure R-I). Thereafter, the applicant has amended the O.A. and has impugned this appellate order also. In the circumstances of the case, the preliminary objection that the application is barred by limitation is also rejected as the appeal has been disposed of by the respondents only in 1997.

14. In the impugned penalty order dated 22.5.1997, the respondents have stated that late Shri Jatav while posted as CTTI, Kasganj had failed to carry out his transfer order dated 17.11.1984 to Fatehgarh. They have stated that though he was spared from Kasganj from 7.10.1985, he never joined at Fatehgarh. When his case was reviewed under Rule 2046 (R-II) under Section 620/IREM after he had completed 55 years of age or 30 years of service, according to the respondents, they had taken a decision to issue the notice dated 6.1.1986 for his premature retirement. They have also stated that the adverse entry in Jatav's C.R. for 1984-85 was conveyed to him on 1.7.1985 and they have stated that he had also been frequently penalised for his acts and omissions in the past. They have stated that a major penalty chargesheet was issued on 31.7.1985 before the impugned notice dated 6.1.1986 was passed, but since a decision to prematurely retire him had been taken under Rule 2046, the chargesheet became meaningless and hence it was cancelled.

15. We will, therefore, have to consider the validity of the impugned orders on merits. It is settled law that an order of compulsory retirement/premature retirement is not a punishment and it implies no stigma nor any

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suggestion of misbehaviour when it has been passed in accordance with the rules (See the observations of the Supreme Court in Baikuntha Nath Das's case (supra), I.K. Mishra Vs. Union of India & Ors. (JT 1997(6) SC 390)). In Baikuntha Nath Das's case (supra), the Supreme Court has laid down the following principles in dealing with the order 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 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) 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 government servant 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 circumstance by itself cannot be basis for interference. Interference is permissible only on the grounds mentioned in (iii) above."

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16. In the present case, the applicant had been promoted to the post of CTTI in the pay scale of Rs.700-900 w.e.f. 1.1.1984. The respondents had communicated certain adverse entries in his CR for 1984-85 on 1.7.1985 against which the learned counsel for the applicant has submitted that he had filed an appeal which was still pending with the respondents. Taking into account the observations of the Hon'ble Supreme Court in **Baikunth Nath Dass's case (supra)** since the applicant had been promoted to a higher post w.e.f. 1.1.1984, prior to the adverse remarks for 1984-85, adverse remarks, if any, given to him earlier would lose their sting. In the impugned appellate authority's order dated 22.5.1997, it is stated that they have conveyed the adverse remarks for 1984-85 to Shri Jatav on 1.7.1985 but he had been frequently penalised for acts and omission in the past. For this, it appears that the impugned premature retirement order had been passed taking into account his past acts and omissions i.e. prior to 1984 which ~~would not~~ ~~be taken into account against the employee,~~ totally ignoring the fact that he had also received a promotion in the same year and as stated by the Hon'ble Supreme Court in para (iv) above, these would have lost their sting. Apart from this, we have no reason to doubt that on the adverse remarks being communciated to Shri Jatav on 1.7.1985, he had submitted an appeal, which was not disposed of by the respondents. We are unable to agree with the contention of the respondents in their counter affidavit that these orders are not appellable and this itself shows that the respondents had not considered the appeal submitted by the deceased employee. In the circumstances, we find substance in the contention of Shri B.S. Mainee, learned counsel for the applicant, that the respondents could not have relied

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upon these adverse remarks in the C.R. for 1984-85 to compulsorily retire Shri Jatav when his appeal was still pending. In **Gurdial Singh Fizi's case (Supra)**, the Supreme Court has laid down the principle that unless an adverse report is communicated and representation, if any, made by the employee is considered, it cannot be acted upon to deny him promotion. This principle was followed in **Brij Mohan's case (supra)** where it was held that it would be unjust and unfair and contrary to the principles of justice to retire prematurely a Government employee on the basis of the adverse entries which are either not communicated to him or if communicated representations made against these entries are not considered and disposed of. Therefore, in the facts and circumstances of the case, it is quite evident that the representation/appeal submitted against the adverse remarks communicated to him for 1984-85 has not been disposed of by the respondents and as such their action in taking into account these entries, which is evident from the impugned appellate authority's order dated 22.5.1997 is, unjust, unfair and contrary to the judgements of the Supreme Court, referred to above. Therefore, while considering the entire service records of the employee the competent authority ought to have kept in view the fact that he had recently been promoted and also should have disposed of the appeal against the adverse remarks before passing the order of compulsory retirement. Therefore, on these grounds, the impugned compulsory retirement order is liable to be set aside.

17. Another infirmity urged by Shri Mainee, learned counsel, was that the respondents had also issued a major penalty chargesheet against the applicant's husband and then

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passed the impugned order which is, therefore, a short cut method and unsustainable. It appears from the facts of the case that we cannot categorically come to the conclusion that this contention is baseless as the respondents could have continued with the disciplinary proceedings, if they chose to do, instead of passing the order of compulsory retirement on 6.1.1986 and then cancelling the chargesheet dated 31.7.1985 on the ground that it had become meaningless, which, therefore, appears to be a short cut method they have adopted.

18. Shri B.S. Mainee, learned counsel for the applicant, had also contended that since the applicant had been recently promoted in accordance with the respondents' own Instructions and Rules, the competent authority ought to have considered him for the lower post from which he was promoted. The proviso to Rule 2046(h) of the Railway Rules is reproduced below:

(i) if he is in class I or class II service or post in a substantive or temporary capacity, or in a class III post in a substantive capacity, but officiating in a class I or class II post or service and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case, after he has attained the age of 55 years;

Provided that a Railway servant, who is in a class III post or service in a substantive capacity, but is holding a class I or class II post or service in a officiating capacity shall in case it is decided to retire him from the class I or class II post or service in the public interest, be allowed on his request in writing to continue in service in the class III post or service which he holds in a substantive capacity.

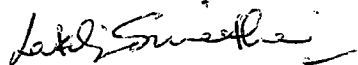
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Nothing has been placed on record to show whether the Review Committee or the competent authority had considered the deceased employee in terms of the relevant instructions whether he could have been placed in the lower post from which he was recently promoted.

19. For the reasons given above, we are satisfied that the impugned order compulsorily retiring the deceased employee in public interest has been passed without following the relevant law/rules and Instructions, in an arbitrary manner and accordingly the impugned orders dated 6.7.1986 and 22.5.1997 are quashed and set aside. The applicant shall be deemed to have continued in service upto the age of superannuation i.e. 58 years or till his date of expiry, whichever is earlier, with consequential benefits, including pay and allowances ^{accordance with law/rules.} The respondents shall accordingly recalculate the pensionary benefits due to the applicant and her late husband and pay the due amounts to the applicant, in accordance with the law and rules, within three months from the date of receipt of a copy of this order.

O.A. is allowed, as above. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member (J)


(S.R. Adige)
Vice Chairman (A)

SRD