

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No. 2019/90.

Date of decision: 21.3.95

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

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

Shri Tikam Chand,
S/o Shri Sri Ram,
R/o House No. 2710,
Tri Nagar,
Delhi-110 036.

.. Applicant

(By Advocate Shri Shankar Raju)

versus:

1. The Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. Union of India,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi
through its Secretary.
3. Additional Commissioner of Police,
Delhi Police, Police Headquarters,
MSO Building, I.P. Estate, .. Respondents
New Delhi.

(By Advocate Shri Vijay Pandita)

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LHon'ble Smt. Lakshmi Swaminathan, Member (Judicial) 7

The applicant has filed this application under
Section 19 of the Administrative Tribunals Act, 1985
against the order passed by the Additional Commissioner of
Police (ACP) dated 6.9.1990 compulsorily retiring him
from service (Annexure P-2). He has also challenged the
disciplinary proceedings initiated against him vide order
dated 16.1.1990 (Annexure P-4) and suspension order
dated 8.11.1989 (Annexure P-3). The suspension order has

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been later revoked with immediate effect by order dated 6.9.1990 (Annexure P-1).

2. The brief facts of the case are that the applicant was directly appointed as Assistant Sub-Inspector of Police w.e.f. 16.7.1959. He was promoted as Sub-Inspector of Police w.e.f. 12.10.1970 and further promoted as Inspector of Police w.e.f. 21.2.1989. He was posted in the Office of Foreigner Regional Registration Office till his compulsory retirement by the order dated 6.9.1990. The applicant states that he has received 120 commendation certificates for good work. According to him, his suspension order dated 8.11.1989 and subsequent initiation of disciplinary proceedings were frivolous, baseless and fabricated. An enquiry had been instituted against him under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 by order dated 16.1.1990 (Annexure P-4). In this enquiry, the allegations levelled against the applicant were that he demanded and accepted money for clearing a passenger without confirming his identity; when there were clear contradictions in the dis-embarkation card and the pass-port of the passenger, which allegations were denied by the applicant. The applicant has alleged certain irregularities in the conduct of the enquiry proceedings. On 6.9.1990, his earlier suspension order dated 8.11.1989 was revoked and the impugned order of compulsory retirement served on him on the same date. In this O.A. the applicant has challenged the validity of the impugned order of compulsory retirement dated

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6.9.1990 and the initiation of the departmental proceedings.

3. We have heard Shri Shankar Raju, learned counsel for the applicant and Shri Vajay Pandita, learned counsel for the respondents.

4. During the hearing the learned counsel for the applicant has confined his challenge in this application to the validity of the order of compulsory retirement dated 6.9.1990 on the following grounds :-

(i) That it is by way of punishment as the departmental enquiry proceedings were still pending and this method has been adopted as a short-cut in contravention of the Appendix X(II) (3)(5) of the instructions regarding premature retirement of Central Government servants appended to the Pension Rules. He relies on the following judgments :-

- (a) B.M. Shah v. UOI (1991(18) ATC 155 ;
- (b) J.L.Jain v.UOI (1991 (2) ATJ 410 ; and
- (c) K.Ramakrishna v. UOI (1991(Vol.II) ATJ 585).

(ii) That the applicant had been promoted as Inspector on 21.2.1989 and after this date since there was no adverse entry in his confidential report or any enquiry pending against him except the one referred to above, the order of compulsory retirement is by way of punishment.

(iii) He relies on the judgment of Supreme Court in UOI v.K.R. Tehliani that no compulsory retirement can be passed when the applicant was working only in an officiating capacity as Inspector.

This argument can be straightforwardly rejected as this case has been overruled by the Supreme Court in Ahuja v. UOI (1987 (1) SCC 604)

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(iv) Relying on the judgment of this Tribunal in Dwarka Prasad v. UOI (ATR 1990 (1) CAT 93 (Shimla)), the contention is that once the applicant has been promoted, any adverse entry prior to the promotion, is washed out. The applicant had been promoted under Rule 19(1) of the Delhi Police (Promotion & Confirmation) Rules, 1960 as Inspector on 21.2.1989 and the order of compulsory retirement could, therefore, not take into account any past adverse entry in his service. He has also relied on the judgment of the Supreme Court in P&T Board v. CNS Murthy (1993 (Vol.II) SLJ 16).

(v) Since the Commissioner of Police is head of the Review Committee, there was no independent application of mind by the competent authority, namely, the Additional Commissioner of Police, who is the competent authority in this case to pass the impugned order of compulsory retirement (Bakshi Ram v. UOI & Ors. (O.A. No. 1325/88) decided on 22nd December, 1993).

(vi) The Review Committee had met on 23.8.1990 and 31.8.1990 and at that time, according to the applicant, since he was appointed on 16.7.1959, he had not completed 30 years of service as provided under Rule 48 of the Central Civil Service (Pension) Rules, as the applicant was under suspension for 10 months prior to the date and the applicant was also subjected to punishment of one year forfeiture of service. According to the applicant, if these two periods are taken into account, he has not completed 30 years of qualifying service as required under the CCS (Pension) Rules for compulsorily retiring him from service.

5. The learned counsel for the respondents has referred to the reply filed by the respondents in which it is stated that he has been suspended as many as six times during his career and it was also noted that he was brought on the list of officers of doubtful integrity vide DCP (Vigilance)'s

letter dated 2.2.1990. Shri Vijay Pandita states that the Internal Screening Committee and the Review Committee had recommended his premature retirement after considering his service record in accordance with the relevant rules and procedure. He submits that the order of compulsory retirement was not by way of punishment but has been rightly taken in the public interest under Rule 48 of the CCS (Pension) Rules. He has also referred to, and placed on record, the circular dated 15.10.1985 to show that all services for which the Government servant is paid from the Consolidated Fund of India will be treated as qualifying service. In view of these provisions, the applicant had completed 30 years of qualifying service, including of his one year of forfeiture of service, at the time when the impugned order dated 6.9.1990 had been passed or even at the time when the Review Committee made its recommendations on 23.8.1989 and 31.8.1990. He has also mentioned that the judgment of Bakshi Ram (Supra) relied upon by the applicant has been stayed by the Supreme Court vide order dated 12.7.1994. In the facts and circumstances of the case, he submits that the application may be dismissed.

6. We have carefully considered the arguments of both the counsel, perused the records in the case and the judgments referred to above. The respondents have also submitted the relevant files pertaining to the Screening Committee, Review Committee and the ADRs of the applicant for our perusal.

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7. The Supreme Court in P&T Board & Others v. CNS Murthy (Supra) has followed their earlier decision

in Baikuntha Nath Das v. Chief District Medical Officer
and

1992(2) JTJ laid down the following principles with
regard to the modalities for the invocation of funda-
mental rule 56(j), which is in pari materia to Rule 48
of the CCS (Pension) Rules, namely -

- (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 a 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 showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above.

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8. We have perused the Reports of the Internal Screening Committee and Review Committee and are satisfied that they have considered the entire record of service of the applicant before taking a decision. It is clear from the record of service that the applicant has been placed under suspension and punished, and his service record cannot be considered to be satisfactory. His name had also been put in the secret list of persons of doubtful integrity. Considering the record, therefore, we find no infirmity in the decisions of the Screening or Review Committees in recommending that /as they are not arbitrary or unreasonable. the applicant should be compulsorily retired. In his rejoinder affidavit, the applicant has not disputed the various punishments awarded to him during his service.

9. The Review Committee had been constituted by the Commissioner of Police with the Additional Commissioner of Police (A) as Chairman, who had considered the service record of the applicant before recommending his retirement in the public interest. The allegation of the applicant that since the Review Committee was headed by the Commissioner of Police himself, therefore, the competent authority has not applied his mind independently is contrary to the facts and, therefore, untenable. It is accordingly rejected.

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10. The other main ground taken by the applicant is that the order of compulsory retirement cannot be passed for any particular act of mis-conduct as this would amount to punishment and is contrary to Appendix X of the CCS (Pension) Rules. In the decision in K. Ramakrishan v. UOI & Ors. (Supra) relied on by the applicant, the Tribunal had taken the view that the applicant was compulsorily retired on account of misconduct and when an appeal against the penalty order was pending. This is not the case before us. Similarly, in B.M. Shah v. UOI & Ors (Supra) one of the main grounds on which the compulsory retirement order was set aside was that the Screening Committee and the Review Committee had made the recommendation in ignorance of the material fact which is not the situation before us. So both these cases are distinguishable.

11. In the recent decisions of the Supreme Court in State of U.P. v. Abhai Kishore Masta (1995) 29 ATC 16 the Court held:-

* It cannot be said as a matter of law nor can it be stated as an invariable rule, that any and every order of compulsory retirement made under Fundamental Rule 56(i) (or other provision corresponding thereto) during the pendency of disciplinary proceedings is necessarily penal. It may be or it may not be. It is a matter to be decided on a verification of the relevant record or the material on which the order is based.

In the State of U.P. v. Madan Mohan Nagar, it has been held by a Constitution Bench that the test to be applied in such matters is

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"does the order of compulsory retirement cast an aspersion or attach a stigma to the officer when it purports to retire him compulsorily ?" It was observed that if the charge or imputation against the officer is made the condition of the exercise of the power it must be held to be by way of punishment- otherwise not. In other words if it is found that the authority has adopted an easier course of retiring the employee under Rule 56(j) instead of proceeding with and concluding the enquiry or where it is found that the main reason for compulsorily retiring the employee is the pendency of the disciplinary proceeding or the levelling of the charges, as the case may be, it would be a case for holding it to be penal. But there may also be a case where the order of compulsory retirement is not really or mainly based upon the charges or the pendency of disciplinary enquiry. As a matter of fact, in many cases, it may happen that the authority competent to retire compulsorily under Rule 56(j) and authority competent to impose the punishment in the disciplinary enquiry are different. It may also be that the charges communicated or the pendency of the disciplinary enquiry is only one of the several circumstances taken into consideration. In such cases it cannot be said that merely because the order of compulsory retirement is made after the charges are communicated or during the pendency of disciplinary enquiry, it is penal in nature."

(emphasis added)

Having regard to the aforesaid observations of the Supreme Court, the service record of the applicant, and the proceedings of the Screening and Review Committees in this case, it cannot be said that the order of compulsory retirement is penal in nature and otherwise invalid or illegal. During the period under review one of the relevant circumstance that can be taken ^{into} ~~into~~ account is that

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a Disciplinary enquiry had been instituted against the applicant which is pending. In the circumstances of the case, we do not find that the impugned order is penal in nature.

12. The applicant has been promoted as Inspector on 21.2.1989 and the impugned order of compulsory retirement has been passed more than 1½ years later taking into account the entire service record of the applicant as mentioned in principle (4) of the judgment of the judgment of the Supreme Court in P&T Board and Others v. C.S.N. Murthy and Others. In the facts and circumstances of the case, the contention of the applicant that because he has been promoted all his prior adverse entries lose importance and are washed out is, therefore, not tenable and the impugned order is not liable to be quashed.

13. Next, the contention of the applicant that he has not completed 30 years' qualifying service before the impugned order was passed, is without any basis having regard to Rule 14 of the CCS(Pension) Rules, 1972 read with the Department's Circular dated 15.10.1985. This argument is also rejected.

14. We also do not find merit in the other contentions taken by the applicant to warrant any interference in the case. In the result, the OA fails and is dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)

Member(J)

K. Adige
(S.R. Adige)

Member(A)