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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**NEW DELHI**

O.A. No. 2219 of 1990  
T.A. No.

DATE OF DECISION 13.2.1995


<u>Kunj Behari</u>	Petitioner
<u>Shri Shyam Babu</u>	Advocate for the Petitioner(s)
Versus	
<u>Delhi Administration &amp; Ors.</u>	Respondent
<u>Shri Anoop Bagar</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE S. C. MATHUR, CHAIRMAN

The Hon'ble Mr. P. T. THIRUVENGADAM, MEMBER(A)

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

  
( S. C. Mathur )  
Chairman

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO. 2219/90

New Delhi this the 13<sup>th</sup> day of February, 1995  
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HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN  
HON'BLE SHRI P. T. THIRUVENGADAM, MEMBER (A)

Kunj Behari,  
Ex Sub Inspector,  
S/O Jwala Prasad,  
R/O S/1/2 Police Colony,  
Andrews Ganj,  
New Delhi.

... Applicant

( By Advocate Shri Shyam Babu )

Versus

1. Delhi Administration, Delhi  
through its Chief Secretary,  
5, Sham Nath Marg,  
Delhi.

2. Commissioner of Police, Delhi,  
Police Headquarters,  
I.P. Estate, Bahadurshah  
Zafar Marg, New Delhi.

3. Dy. Commissioner of Police,  
Indira Gandhi International  
Airport, New Delhi.

... Respondents

( By Advocate Shri Anoop Bagai )

O R D E R

Shri Justice S. C. Mathur —

This Original Application is directed against order dated 5.9.1990, Annexure-F, passed by the Deputy Commissioner of Police, Indira Gandhi International Airport, New Delhi compulsorily retiring the applicant, Kunj Behari, from service. At the relevant time, the applicant was holding the post of Sub Inspector of Police in Delhi Police force.

2. The impugned order has been challenged on two grounds — (1) it takes into account an entry which was recorded prior to applicant's promotion to the

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higher post and thus stood washed off; and (2) the said entry has been treated as adverse while in fact it is not so.

3. The service profile of the applicant as revealed from the pleadings of the parties and the records produced by the learned counsel for the respondents, is as follows :

The applicant joined the Delhi Police force as Constable on 2.4.1956. He was promoted as Head Constable w.e.f. 16.8.1963. W.e.f. 11.2.1975, he was promoted as Assistant Sub Inspector of Police. On 13.5.1985 in the annual confidential report for the period 1.4.1984 to 25.3.1985, the following mention was made -

"He is an average type of officer whose performance remained fair during the period under report. However, he is slack in disposal of cases and needs proper supervision in this respect."

In 1985 itself he was selected to undergo training for promotion to the post of Sub Inspector of Police. On 19.4.1985 he was sent for six months' training. The training was completed in October, 1985. Despite completion of training, actual order of promotion was not passed as meanwhile the applicant got involved in disciplinary proceedings. In one of such proceedings, the punishment of censure was awarded by order dated 16.6.1986 for committing lapses/irregularities in case F.I.R. No. 559 of 1984. By another order passed on 30.7.1986 in a different disciplinary proceeding two years' service was forfeited. The charge in this proceeding included acceptance by the applicant of Rs.25/- as bribe.

*[Handwritten signature]*

The forfeiture of service was not permanent but temporary. By yet another order dated 15.2.1988 passed in separate proceeding his one future increment was withheld temporarily for one year. By another order passed on the same date (15.2.1988), two future increments were stopped permanently. One year's service was forfeited permanently by order dated 1.8.1988. On the basis of his selection for training for the post of Sub Inspector of Police in the year 1985 he was promoted to the post of Sub Inspector by order dated 15.2.1989. Within about one and a half year of promotion to the post of Sub Inspector the applicant was compulsorily retired by order dated 5.9.1990. Against the above order of compulsory retirement the applicant preferred representation on 4.10.1990. The present O.A. was filed on 25.10.1990. On 30.10.1990 interim order was passed restraining the respondents from dispossessing the applicant from the official accommodation allotted to him.

4. The submission of the learned counsel for the applicant, Shri Shyam Babu, was that the adverse material existing in the record prior to his promotion to the post of Sub Inspector of Police by order dated 5.9.1990, could not have been taken into consideration while ordering the applicant's compulsory retirement. In support of this submission, the learned counsel has cited DR. (MRS.) VEENA KAPOOR v. VARINDER KUMAR KAPOOR<sup>(1)</sup> and J. D. SRIVASTAVA v. STATE OF M.P. AND OTHERS<sup>(2)</sup> and

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(1) AIR 1982 SC 793  
 (2) AIR 1984 SC 630

the unreported judgment of a Division Bench of this Tribunal in O.A. No. 62 of 1990 (MANSA SINGH v. LT. GOVERNOR OF DELHI & ORS.) decided on 2.6.1994.

5. The law on the question of compulsory retirement has been succinctly laid down by their lordships of the Supreme Court in BAIKUNTH NATH DAS & ANOTHER v. DISTRICT CHIEF MEDICAL OFFICER, BARIPADA<sup>(3)</sup>. In this judgment, their lordships have laid down the following propositions :-

- (1) compulsory retirement is not a punishment;
- (2) principles of natural justice are not attracted;
- (3) compulsory retirement is done on the subjective satisfaction of the Government that it is in public interest to do so;
- (4) before taking the decision to retire prematurely the Government or the review committee shall have to consider the entire record of service of the concerned person, attaching more importance to record of performance of later years;
- (5) 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 on merit and not merely on seniority;
- (6) scope of judicial interference is limited to finding out --
  - (i) whether the order is mala fide, or
  - (ii) whether it is based on no evidence, or

(3) JT 1992 (2) SC 1

(iii) whether it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material,

in other words, it is perverse;

(7) order of compulsory retirement would not be liable to be quashed on the mere showing that while passing it, uncommunicated adverse remarks were also taken into consideration -- interference is permissible only when one or more of the conditions mentioned in (6) above is satisfied.

This judgment does not say that the adverse entry recorded prior to promotion becomes irrelevant, redundant or non-existent. It only says that it loses sting. Therefore, the submission of the learned counsel that the said adverse entry or material cannot be taken into account at all, cannot be accepted. The effect of loss of sting may require greater probe where the order is based solely on one adverse entry which was recorded prior to grant of promotion. Where the order is based on other material also, the loss of sting of one entry will not affect the validity of the order of compulsory retirement, because in such a situation it will not be possible to say that the order is based on no evidence and is, therefore, arbitrary attracting clauses (ii) and (iii) of the 6th proposition.

6. In the case on hand, the decision to retire the applicant has obviously been taken not on the basis of the entry recorded in the year 1985. It has been taken on the basis of the later material which came

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into existence in the years 1986 and 1988. This material is more proximate to the date of compulsory retirement and in view of the 4th proposition mentioned above, has <sup>more</sup> relevance than the record of the year 1985. This later record shows that the applicant was guilty of accepting illegal gratification also. If such a person is retired from service, the subjective satisfaction of the concerned authority cannot be said to be arbitrary. The present case is not one of lack of evidence.

7. In view of the discussion herein, we are of the opinion that the order of compulsory retirement does not suffer from any infirmity. However, before closing we may examine the three authorities cited by the applicant.

8. In Dr. (Mrs.) Veena Kapoor's case (supra), the order of compulsory retirement was based solely on the entry which was made prior to promotion. Except that entry there was no adverse material. It was in these circumstances that the impugned order was held to be arbitrary. In the case on hand, apart from the entry of the year 1985 there is other adverse material reference to which has been made hereinabove. This authority has, therefore, no application to the facts of the present case.

9. J. D. Srivastava's case (supra), the order of compulsory retirement was based on a twenty year old entry. This entry was held to be stale. It is on this basis that the order became arbitrary.

10. In Mansa Singh's case (supra), strong reliance was placed by the learned counsel for the applicant on the observations contained in paragraph 8 of the judgment. Paragraph 8 reads as follows :-

"8. The applicant joined Police force in 1953. However, he could not get promotion till April, 1988 to the next higher post of Head Constable because he did not qualify in the departmental examination. He could get his promotion of Head Constable only w.e.f. April, 1988 and that too on ad-hoc basis. When the respondents have considered him fit for giving promotion, it does not stand to reason how one year and five months after, he was considered as unfit to continue in service. The learned counsel for the respondents pointed out that this is routine promotion which normally shall also be available to any average Constable as per length of service. The fact remains that after promotion the previous entries, if any, in ACR do not carry much weight and gravity of adverse remarks also gets diminished."

In the above observation it has not been held that the adverse entry becomes non-existent after promotion has been given subsequent to the award of entry. All that has been mentioned by the Division Bench is that such entry does not carry much weight and gravity and it gets diminished. The Division Bench allowed the O.A. as it found that the compulsory retirement was not based on any evidence and was, therefore, arbitrary. This finding was recorded as the Division Bench found that from 1977 to 1988 most of the entries described the applicant as excellent or very good and it was only prior to 1977 that there were some adverse remarks. The remarks of the last ten years immediately preceding the date of retirement being excellent and very good, the Division Bench was of the opinion that

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the retirement was arbitrary. It is also worth mentioning that the order of retirement was passed on 31.8.1989 and in April, 1988 the applicant had been promoted to higher post on ad hoc basis. Between the date of promotion and the date of compulsory retirement only one year and five months had expired. The judgment of the Division Bench of the Tribunal is based on its own facts.

11. In view of the above, the application lacks merit and is hereby dismissed, but without any order as to costs. Interim order, if any operating, shall stand vacated. If the applicant has continued in occupation of the Government accommodation in pursuance of the interim order granted by the Tribunal, it will be open to the respondents to recover from him rent or penal rent or damages, according to rules.

*P. T. Thiruvengadam*

( P. T. Thiruvengadam )  
Member (A)

*S. C. Mathur*

( S. C. Mathur )  
Chairman

/as/