

5

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.2449/90

New Delhi this the 12th Day of January, 1995.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman(J)
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Sh. Mangat Ram,
S/o late Sh. Amar Singh,
R/o Vill.&P.O. Morta P.S.Murad Nagar,
District Ghaziabad,U.P. Applicant

(Applicant in person)

versus

1. Commissioner of Police Delhi,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate, New Delhi.
2. Addl. Commissioner of Police/Security,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police/Security,
Copernicus Marg, New Delhi. Respondents

(through Sh. Rajender Pandita, advocate)

ORDER

delivered by Hon'ble Mr.B.N.Dhoundiyal, Member(A)

The applicant Sh. Mangat Ram, a retired A.S.I. of Delhi Police has challenged the order dated 30.8.89 whereby he has been retired prematurely.

The applicant was appointed in Delhi Police on 7.3.1959. was promoted as Head Constable in 1968 and A.S.I. in 1976. He has mentioned certain events in his service career which might have influenced the decision to retire him prematurely. A charge of misappropriation was levied against him in 1975 but he was acquitted by the Munsif Magistrate on 23.7.84. Again a D.E was ordered against him on the same ground but it was

End

dropped on the basis that there were no grounds to proceed with the enquiry. The suspension period from 29.9.78 to 22.7.84 was treated as already spent on duty for all purposes. Thereafter, he was promoted as S.I. on 28.7.1988 and was posted in the security unit where he worked upto 30.8.1989. He filed an appeal against the order of termination on 31.8.1989. His contention is that the sole consideration for decision to retire him was the adverse entries in the A.C.R. recorded during the period from 8.7.1976 to 31.7.1977 which were never communicated to him. Moreover, these entries were based on the allegations which were not proved either in the criminal court or during the departmental enquiry. Adverse entry, if any, prior to his promotion should not have been considered. During the period he worked in the security unit of Delhi Police, he was sanctioned three commendation certificates and 9 commendation card Class-I with cash rewards. The reliefs claimed in the O.A. are:-

(a) Quash the order of retirement dated 30.8.89;

(b) Direct the respondents to treat him as on duty and pay the arrears of salary, allowances and other benefits etc.

In the counter-affidavit filed on behalf of the respondents, the main averments are these. The applicant was censured by the Commandant

BN

for misconduct while he was posted as Mess Manager in 1969. Orders for retirement were, therefore, issued after due consideration. The adverse record of the applicant for the entire service period was considered by the screening and the review committees.

Our attention has been drawn to the judgement of the Hon'ble Supreme Court in the case of Baikuntha Nath Das Vs. Chief District Medical Officer (AIR 1992 Vol. 79 P. 1020) wherein the following observations were made:-

- (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) mala fide, 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

bw

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 a basis for interference.

A perusal of A.C.R. dossier shows that for the period from 1.4.1989 to 30.8.1989, the applicant was working in the President Cell. It is recorded that he is an intelligent and pains taking officer and his working and conduct was good. Same type of entries have been recorded in the A.C.R. for the period from 5.7.1988 to 31.3.1989 wherein he has been declared as honest and moral courage & readiness to expose the malpractices of subordinates have been rated as good while his general power of control and organising ability is rated as satisfactory. For the period from 1.4.1987 to 5.7.1988 during which he was promoted as S.I., the work and conduct is rated as good. During the period from 1986-1987 again the work and conduct is rated as good. In the entry for the period from 1.4.1986 to 31.3.1987, he has been rated as a good officer and for the period from 7.11.1985 to

G.N.

31.3.1986, his work and conduct is rated as satisfactory. During the period from 1984 to 1985, his work and conduct is rated as satisfactory. During the periods 1978 to 1984, he remained under suspension and as such, no entry was recorded. While the over all service record of an employee has to be seen, more reliance has to be placed on the entries for the later period particularly keeping in view the fact that the affect of any adverse remark given prior to promotion is lesser. We note from the averments made by the respondents in the counter that the applicant submitted an appeal addressed to the Commissioner of Police, Delhi on 31.8.89 which was still under consideration. We, therefore, remand the case to the Commissioner of Police to decide the appeal of the applicant on the basis of the observations mentioned above. If even after considering the good entries earned by the applicant during the period from 1985 to 1988, the Commissioner of Police reaches the conclusion that his appeal has to be rejected, he shall do so after passing a speaking order. Such an order shall be passed within a period of three months of the receipt of a certified copy of this order.

The application is disposed of with the above observations.

No costs.

B. N. Dhoundiyal
(B.N. Dhoundiyal)

Member(A)

/vv/

S.K. Dhaon
(S.K. Dhaon)

Vice-Chairman(J)