

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA No.2547/90

New Delhi this the 6th day of September, 1995.

Hon'ble Mr. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

A.P Gupta,
S/o Sh. Shri Chand Gupta,
R/o BE-16, Shalimar Bagh,
Delhi-110 052.Applicant

(By Advocate Sh. G.D. Gupta)

Versus

1. The Chief Administrative Officer,
Ministry of Defence,
C-II Hutmants, Dulhousie Road,
New Delhi-110 011.
2. The Additional Director General
of Signal Intelligence,
GS Branch, Army HQs,
Ministry of Defence,
9th Floor, 'A' Block,
Sena Bhavan,
New Delhi-110 011.
3. Union of India,
Ministry of Defence,
New Delhi - through
its Secretary.
4. Lt. Col. R.N. Nair (Retired)
through Respondent No.2
5. Col MMK Nambiar (Retired)
through Respondent No.2 ...Respondents

(By M. Sethuramalingam, Presenting Officer)

ORDER

(Hon'ble Mr. N.V. Krishnan, Vice-Chairman (A))

The applicant, a Research Officer in the
Signal Intelligence Directorate in the Ministry of
Defence was retired by the Annexure P-1 order dated
30.4.90 in public interest under FR 56 of the clause
(j) (1) of Fundamental Rules (FR), after having
attained the age of 50 years on 19.4.90.



2. The representation filed by him against this order has been rejected by the Annexure P-48 order dated 29.8.90. Hence, this OA has been filed challenging both these orders.

4. The respondents have filed a reply contesting this application.

5. Before proceeding further, we may note the principles that have been formulated by the Supreme Court in *Shri Baikuntha Nath Das vs. D.M.O. Baripada* in para 34 of their judgement (JT 1992 (1) SC 1) as follows:-

34. The following principles emerge from the above discussion:

(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 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 an 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. Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above."

6. The reply of the respondents did not indicate the view taken by the Review Committee excepting to mention that the Committee recommended the applicant's retirement and based on that recommendation, the impugned order was passed. It also stated that the Representation Committee considered his petition against that order and decided to reject the same. Therefore, we found it necessary to call for the records relating to proceedings of the Review Committee and the Representation Committee as also the character roll of the applicant. We have perused them. The learned counsel for the applicant was permitted to see the documents.

7. The applicant has challenged these orders on the ground that the entire service record had not been seen and that stale adverse remarks given by a biased officer in the past have been taken into account and no consideration was given to the fact that, after promotion in 1984 there was a declaration of his probation. After a perusal of the Review Committee's report the learned counsel contended that

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his promotion in 1984 meant that adverse record if any prior to that date has lost its strong importance. As his probation was declared after an extension, as late as on 29.10.87, there are no grounds to take action under FR 56(j)(1) to retire him. He relied for those propositions on the judgements of the Supreme Court in State of Punjab vs. Chunilal (1970 SLR 375 SC), Swami Saran vs. State of U.P. 1979 (2) SLR 781 SC and Brij Mohan Singh vs. State of Punjab (AIR 1987 SC 948).

8. The Presenting Officer of the Department argued that the order cannot be interfered with except on the limited grounds mentioned in the case of Baikunthanath Das supra and that there is no ground to assail that order in this case. He also relied on the subsequent decision of the Apex Court in P & T Board and Others vs. C.S.N. Murthy (1992 21 ATC 664 SC) and Union of India vs. Tushar Ranjan Mohanty and Others (1995 (1) SLJ 110 SC).

9. We have carefully considered the rival contentions.

10. A perusal of the file No.A/27220/CAO/P2 shows that the applicant's case was referred to the Joint Secretary (Education), the member of the Review Committee. He recorded as follows:-

"I have gone through the CR Dossier of Shri A.P. Gupta, Research Officer, and find that his performance during the last several years has been generally graded as average. In the report for the period 29.10.1984 to 29.10.1986, the Reporting Officer had noted

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that Shri Gupta was "not keen in his profession, not ready to accept responsibility, needs feeding and regular supervision....explanation for remaining absent from the seat without intimation was called". He was also found not fit for promotion. The adverse remarks were communicated to him. The report for 1985 also contained certain adverse remarks including remarks about doubtful integrity. These remarks were also communicated and his representation not accepted. I, therefore, find that the officer has earned adverse remarks for three years during the last five years. His performance has improved to some extent during the last two years. I would suggest that his performance should be watched for at least two more years and he should be allowed to be retained in service only if his performance shows distinct improvement.

2. The record of Shri S.N. Sastry, Research Officer, is consistently good and I recommend him for retention in service in pursuance of the instructions contained in the Department of Personnel & Administrative Reforms O.M. No.25013/14/77-Ests(A) dated the 5th January, 1978."

This recommendation was placed before the Chairman of the Review Committee, viz. the Defence Secretary, Sh. Naresh Chandra, who recorded as follows on 22.1.90:-

"Seen.

Shri S.N. Sastry - fit to be retained.

Shri A.P. Gupta - On a perusal of his service record and CR dossiers, he does not seem fit enough to be retained. Proceeding under the provisions of 56 (j) is not a penalty. In his case, the appropriate course would be to not retain him in service beyond the age of 50 years."

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11. Thereafter, the file was put up by the SAO in the office of the Chief Administrative Officer, who, after mentioning the above facts, stated that the approval of the Rajya Raksha Mantri be obtained to retire the applicant. This was put up to the Joint Secretary and Chief Administrative Officer, who requested the Rajya Raksha Mantri to approve the above proposal. This was approved by him on 13.2.90. Thereafter the applicant was issued the impugned Annexure A-1 order.

12. The record further shows that when the applicant submitted his petition for review of the order it was placed before the Representation Committee consisting of the Secretary, Department of Education and the Joint Secretary, Department of Power. That Committee noted that in his representation the applicant had contended that his entire service record should have been seen and if there was any thing, disciplinary action should be taken. The Committee, therefore, considered his entire record and noted that on several occasions, adverse entries have been given to the applicant and they were not expunged. In some years, his integrity had also not been fully certified. Hence, the representation was rejected by the Annexure P.48 letter, which inter alia states as follows:-

"AND WHEREAS the Committee after carefully considering the petition submitted by the said Shri AP Gupta vis-a-vis his service record, recommended rejection of the petition submitted by him as the Representation Committee was of the view that on several occasions during his service career the said Shri A.P. Gupta earned

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adverse entries in the ACRs which were duly communicated to him and on consideration of his representations against these remarks the entries were not expunged. While recommending rejection of the petition submitted by the said Shri AP Gupta, the Committee have also observed that in some years his integrity has also not been fully certified."

13. We are of the view that in the circumstances mentioned above, there was no recommendation of the Review Committee. The Joint Secretary (Education), the member of the Committee, felt that the performance of the applicant improved to some extent during the last two years and that his performance should be watched further for at least two more years and that he should be allowed to be retained in service only if his performance showed improvement in his performance. In other words, he wanted his performance to be watched for two more years. The Chairman of the Committee, the Defence Secretary, however, felt that he should not be retained beyond the age of 50 years. These opinions have been recorded on file without the Members of the committee sitting together to consider the case. No meeting of the Committee would have been necessary if the recommendations made by the Members on circulation had been unanimous. When there was a difference of opinion the Chairman of the Committee was bound to have called a meeting of the committee to iron out the differences and reach unanimity, if possible. If that was not possible, the difference should have been recorded and reported to the competent authority, viz., the Rajya Raksha Mantri.

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14. It would then have been for the Rajya Raksha Mantri to take his own decision. If he agreed with the Defence Secretary that the applicant should be retired from service, he, at least, should also give some reasons as to why the opinion of the other Member could not be accepted by him. In any case, no other official had any role to play in this regard. It was not open to the Joint Secretary (Admn.) and the Chief Accounts Officer to recommend to the Minister that the applicant should be retired. The Minister should have taken an independent decision, may be after consulting the Defence Secretary or any other officer, but after recording some reason as to why he agreed with the Defence Secretary rather than with the Joint Secretary (Education).

15. This single circumstance is sufficient to vitiate the proceedings. For, in our view, this is a case where it has to be held that the necessary opinion to retire the applicant has not been taken properly and that the Competent Authority (i.e. the Rajya Raksha Mantri) did not apply his mind to the situation created by the difference of opinion expressed by the Members of the Review Committee. Hence, the decision is arbitrary.

16. In the view that we have taken above, we do not find it necessary to consider the merits of the other issues raised. We only wish to draw attention to the decision of the Supreme Court in Nasirmiya Ahmedmiya Chauhan (1994 (28) ATC 66) which states that action to retire under FR 56 (j) should be

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taken on the basis of the record as obtaining when the relevant age mentioned in the rules was attained (in this case 50 years). The following observations are relevant:-

"3. We have heard learned counsel for the parties. This Court has authoritatively laid down in various judgments that the power under Fundamental Rule 56 (j) can be exercised by the appropriate authority at any time in public interest after the government servant has attained the relevant age or has completed the period of service as provided under the Fundamental Rules. The appropriate authority has to form the opinion that it is in the public interest to retire a person under Fundamental Rule 56(j) on the basis of the service record of the person concerned. There is no other bar for the exercise of the power under the said Fundamental Rule by the prescribed authority. Government instructions relied upon by the Tribunal are only the guidelines laid down by the Central Government for its functioning. A government servant cannot be heard to say that though the order of retirement is justified on the basis of his service record but since there is violation of some Government instructions the order is liable to be quashed. The Tribunal was wholly unjustified in holding that prejudice was caused to the respondent in the sense that he could legitimately believe that under the instructions his case would not be reviewed after the lapse of certain period. The action under Fundamental Rule 56 (j) against a government servant is dependent on his service record earned by him till he reaches the age or completes the service provided under the said rule. If the record is adverse then he cannot take shelter behind the executive instructions and must be "chopped off" as and when he catches the eye of the prescribed authority." (emphasis given)

In other words, the record of service upto 19.4.90 which is the date on which the applicant attained 50 years alone would be relevant. In the circumstances the Member of the Committee, i.e., Joint Secretary (Education) was not correct in suggesting that the performance of the applicant be watched for a further period of two more years. The

Chairman of the Review Committee could have pointed out this implication to that Member and the Committee could have taken a fresh decision. If his performance deteriorated in the subsequent two years that by itself, cannot be a ground to retire him compulsorily because, that decision had to be taken only on the basis of the record as on 19.4.90, i.e., by taking into account the character rolls upto 31.3.90 only. If nevertheless, it was decided to watch the performance for two more years, there would be no objection to consider his case again after the end of that period. The question whether he should be compulsorily retired should still be considered only on the basis of the records upto the date he attained the age of 50 years. Nevertheless, if the Review Committee is, *prima facie*, of the view that the employee has to be retired on the basis of the record of service upto the age of 50 years, it, nevertheless, would be bound to consider the further question whether the record in the subsequent two years showed improvement or better performance and whether on that account a different decision should be taken. In other words, while the decision to retire has to be based on the records as on the relevant age (50 years in this case) the subsequent record may be seen only to decide whether there is ground for departing from that decision because of the subsequent improvement in performance.

17. In so far as the Representation Committee is concerned, it appears that that, this committee has gone beyond the grounds on which the

applicant was retired by the Review Committee. It observed that on several occasions the applicant had earned adverse entries and his representations to expunge them have been rejected. It also noted that in some years his integrity had also not been fully certified. These are extraneous grounds not taken note of by the Review Committee. The Representation Committee has only to see whether the retirement ordered on the grounds mentioned by the Review Committee in its recommendation is justified.

18. In the circumstances mentioned above the order of retirement cannot be sustained. It is quashed. The respondents are now directed to reinstate the applicant in service with all consequential benefits, including payment of salary for the period during which he was kept out of service, within two months from the date of receipt of this order, subject to adjustment of the pensionary benefits for that period and also to the provisions of any instructions relating to his not having been employed during this period when he was out of service. We further make it clear that it is still open to the respondents to consider the case of the applicant for retirement under FR 56 (j) in accordance with law, keeping in view the observations made above.

No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member(J)

N. V. Krishnan
6/5/55

(N. V. Krishnan)
Vice-Chairman(A)

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