

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(14)

O.A. No. 735 199 90
T.A. No.

DATE OF DECISION 9-8-1991.

Shri K. J. Krishan _____ Petitioner
Shri B. B. Raval _____ Advocate for the Petitioner(s)
Versus
Union of India _____ Respondent
Shri O. N. Moolri _____ Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, .. Vice-Chairman.

The Hon'ble Mr. S. Gurusankaran, .. Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

S
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH:DELI

O.A.NO. 735 OF 1990.

DATE OF DECISION: 9-8-1991.

Shri K.J.Krishna.

.. Applicant.

v.

Union of India and others.

.. Respondents.

CORAM:

Hon'ble Shri G.Sreedharan Nair, .. Vice-Chairman.

Hon'ble Shri S.Gurusankaran, .. Member(A)

Shri B.B.Raval, Counsel for the applicant.

Shri O.N.Moolri, Counsel for the respondents.

G.SREEDHARAN NAIR, VICE-CHAIRMAN (J):

JUDGMENT

The applicant who was an Assistant Engineer under the respondents was compulsorily retired from service under Rule 1802(a) of the Indian Railway Establishment Code volume-II by the order dated 23-4-1990. He has filed this application to declare the action of the respondents as null and void. Since the action was taken having regard to certain adverse entries in the Confidential Reports ('CRs') of the applicant, the applicant has also prayed for declaring that such adverse entries and the orders passed rejecting the representations submitted by the applicant against them are illegal. It is alleged that the orders were passed without complying with the requirements of law. In respect of the order of compulsory retirement, the allegation that it is ^{is} mala fide and punitive.

2. In the reply filed on behalf of the respondents, it is stated that the entries in the CRs were recorded in accordance with the Rules, the adverse entries were duly communicated to the applicant and the representations against the same were considered and rejected. It is further stated that

the review committee met on 6-12-1989 to review the cases of Assistant Engineers in order to weed out persons of doubtful integrity and whose performance is unsatisfactory and on the recommendation of the review committee the Railway Board took the decision to retire the applicant. The respondents would also state that the applicant refused to receive the order and the cheque in lieu of three months' pay and allowances. The allegation of mala fides is denied.

3. Advocate Sri B.B.Raval, appearing on behalf of the applicant took us through certain events that took place in the year 1985 as evidenced by the letters at Annexures A9, A10 and A11 etc. and submitted that initially there was an attempt to dub the applicant as a psychiatric patient. We do not think that those letters are of any relevance in deciding the validity of the entries in the CRs, the orders rejecting the representations thereon and the order of compulsory retirement.

4. The concerned file was made available by the counsel of respondents. It shows that by the proceedings dated 12-10-1989 the General Manager nominated certain officers to constitute the review committee to review the cases of officers at the age of 50/55 years or on completion of 30 years of service. The case of the applicant as well as certain others was assessed by the Committee. His CRs from the year ending 31-3-1985 to the year ending 31-3-1989 were considered. In the first three reports there were adverse remarks which were communicated to the applicant and the representations submitted by him had been disposed of. In respect of the last year, the adverse entries were actually communicated to the applicant. It was having regard to these entries that the committee recommended the premature retirement of the applicant. This re-commendation was duly considered by the Railway Board and the decision to retire the applicant was taken.

5. There is absolutely no material to substantiate the

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plea of the applicant that the order of compulsory retirement is mala fide or punitive. As pointed out earlier, the case of the applicant was not considered by singling him out; it arose along with the cases of certain others in the routine process of assessment for weeding out the inefficient.

6. The existence of the adverse entries in the CRs is not disputed by the applicant. His plea is only that the representations submitted against the same have not been disposed of by speaking orders and as such neither the entries nor the orders can be acted upon. It is significant to note that even after the applicant was informed that his representations were rejected, no action was taken by the applicant for quashing those orders or for expunging the adverse entries. When those entries have been relied upon to retire the applicant, it is not open to him to pray for a declaration that the entries as well as the orders are "illegal and not binding upon the right of the applicant".

7. It has to be noticed in this context that there is no prayer in the application even for quashing the order of compulsory retirement; what is prayed for is only a declaration that the action of the respondents by which the applicant was compulsorily retired is illegal, unjust, arbitrary and is null and void. When the power of retirement is conferred on the respondents and it has been exercised in accordance with the statutory provisions, it cannot be declared that the action of the respondents is either illegal or is null and void. We are not able to find any infirmity or illegality with respect to the proceedings initiated for compulsory retirement and the actual order of retirement.

8. Counsel of the applicant, invited our attention to a number of decisions on the subject of compulsory retirement. We do not think that a detailed reference to them is warranted in this case, having regard to the pleadings and the

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reliefs claimed. The ratio of the decisions relied upon by the counsel is only that the order of compulsory retirement has to conform to the prescribed procedure and is to be based on acceptable material. That is very much satisfied in the instant case.

9. Before parting with this case, we have to observe that when an order of compulsory retirement is passed, the employee has the remedy of making a representation thereon and only after the representation is rejected, he is entitled to approach the Tribunal. In the instant case, even without accepting the copy of the order, on getting sent ^{of} the same, he has rushed to the Tribunal with the application.

10. The application is dismissed.

harkar
9/8/1991

MEMBER (A)

l. s. s.
9-8-1991

VICE-CHAIRMAN.