

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA. 889 of 1990

Dated New Delhi, this 22nd day of September, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B. K. Singh, Member (A)

Shri Gurdarshan Singh
R/o R-138/2, Railway Colony
Shakur Basti
DELHI

... Applicant

By Advocate: B. S. Mainee

VERSUS

Union of India through

1. The General Manager
Northern Railway
Baroda House
NEW DELHI

2. The Chief Superintendent
& Stationery Superintendent
Northern Railway, Shakur Basti
DELHI

... Respondents

By Advocate: Shri R. L. Dhawan

O R D E R
(Oral)

Shri J. P. Sharma, Member (J)

The applicant was born on July, 1932, joined the Railways in 1950. He was last promoted in August, 1978 to the post of Mono Key Operator Grade-I under Chief Superintendenting & Stationery Superintendent, Northern Railway, Shakur Basti, Delhi. The respondents, when the applicant crossed the age of 55 years, reviewed his case in accordance with rule 2046 of Indian Railway Establishment Code, Volume-II as per instructions by the Railway Board

le

Contd...2

dated 15.11.79(Annexure A-9). The competent authority, on the basis of the recommendation of the Screening and Review Committee, passed an order on 9.3.88 that the applicant in the public interest, shall stand retired from service with effect from 9.6.88. This order was conveyed to the applicant vide impugned order dated 9.6.88(Annexure A-1).

2. The applicant has assailed this order after making a representation in May, 1990 praying for the grant of reliefs that the impugned order of premature retirement to be quashed and the applicant be allowed to continue till he attains the age of superannuation and be also granted the unpaid wages for this period.
3. The respondents contested this application and stated that the applicant was retired on the basis of the service record and he was not considered fit by the respondents to continue in service. The respondents have also denied the various averments made in the application. The applicant has also filed rejoinder reiterating the stand taken in the OA.
4. We heard the learned counsel for the parties and the respondents' counsel has placed before us the report of the Screening/Review Committee and the file containing the Annual Confidential Reports of the applicant. The contention of the learned counsel for

(10)

the applicant is mostly on the ground that under the instructions referred to above of 1979, the applicant should have been considered at least for the lower post and as such the respondents have not complied with the said instructions. The order, therefore, is liable to be quashed on this ground and the applicant is entitled to the wages for the unpaid period till the date of his normal superannuation. This is a fact that the applicant has not been considered by the respondents for the lower post. However, we have gone through the service record of the applicant of last five years. There is no doubt and nor it can be disputed that the applicant was loosing his efficiency and his performance in each of the five years has been just average or below average. The adverse remarks have also been conveyed to the applicant in 1986 and 1988. Even if the adverse remarks have not been conveyed and as per the decision of the Hon'ble Supreme Court in the case Baikunth Nath Das and Anr. Vs. Chief District Medical Officer, Baripada and Anr. SLJ Vol.43 1992 p.177, uncommunicated adverse entries may also be taken into account while considering the case of retention of a person in service after he has crossed the age of 55 years. The instructions of November, 1979 clearly lays down that on the basis of integrity and on the basis of a person having outlived his utility for serving

16

Contd... 4

(11)

the Government can be considered for premature retirement by screening Committee and the report shall be reviewed by the designated committee appointed for this purpose. It is because of this fact that even uncommunicated report has been taken by the Hon'ble Supreme Court as a justifiable ground to pass an order in such cases. This fact is not disputed by the learned counsel for the applicant. The respondents are free as per extant rules and Rule 2046(H) of Indian Railway Establishment Code Vol.II to retire such an incumbent who almost is a "dead wood".

5. Regarding non consideration of the applicant for lower post it would only be a matter of formal nature as the applicant himself will be a sufferer if he is placed on the lower scale just on the verge of retirement if his contention is accepted. He has also drawn the gratuity on the higher scale of pay on which he retired. He has also drawn the pension as almost four years must have passed since he had super-annuated on normal basis. There is another factor also that the applicant, after this order was passed, had applied to the respondents for appointment of his wife in case he retires, on compassionate ground. In such case the Tribunal would not like to interfere to urge the matter to respondents to consider him for a lower post. The applicant came for redressal of his grievance which may ultimately be in his interest

12

should not be thought of in this procedure. We heard Shri Dhawan, counsel for the respondent who supported the order of premature retirement of the applicant and we are convinced that this order does not call for any interference. Therefore, this application is dismissed. No costs.

(B. K. Singh)
Member (A)

J. P. Sharma
Member (J)

dbc