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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1225/1991

New Delhi, this 21st day of May, 1996.

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

Amar Singh
s/o Shri Desh Raj
155, Gali No.5, Friends Enclave
Sultanpuri Road, Nangloi, Delhi-41 .. Applicant

Shri Shankar Raju, Advocate

vs.

1. The Commissioner of Police
Police Hqrs., MSD Building
IP Estate, New Delhi .. Respondents
2. The Dy. Commissioner of Police
(West District) Tilak Nagar
Rajouri Garden, New Delhi .. Respondents

By Shri S.K. Gupta, proxy for Shri
B.S. Gupta, Advocate

ORDER

Hon'ble Shri B.K. Singh

This OA has been filed against the order
No.10564-640/Estd.(W) dated 5.9.90 (Annexure A-2
of the paper book).

2. The admitted facts of the case/that the applicant
joined as Constable in Delhi Police on 19.3.52 and
rose to the rank of Sub-Inspector. It is admitted
that a departmental enquiry was launched against him
which was quashed by this Tribunal vide its judgement
dated 26.2.92 in OA 1944/90. He had attained the age
of 55 years and was qualified for pension on the date
the order of compulsory retirement was passed on 5.9.90.
It is seen that he has put in practically more than
38 years of service. The reliefs sought for in the OA
are:-



- (i) To quash the the impugned order dated 5.9.90; and
- (ii) To direct the respondents to reinstate the applicant in service as SI w.e.f. 5.9.90 with all consequential benefits including arrears of pay, allowances and continuity of service including seniority and promotion.

3. On notice, the respondents filed their reply contesting the application and grant of reliefs prayed for. Heard the learned counsel for the parties and perused the records of the case.

4. The learned counsel for the applicant argued that this Tribunal has held in the case of Hoshiar Singh & Anr. Vs. UOI (Annexure A-5 to the paper book) that the order of compulsory retirement of sub-inspector can not be passed by the Deputy Commissioner of Police, since he is junior to the appointing authority. He further argued that the impugned order is illegal on the ground that according to guidelines of Govt. of India MHA Memo No.25013/14/77-Estt.(A) dated 5.1.78, it is duty of the competent authority to consider his continuance in the lower post if he was not found suitable to perform the duties of higher post. It was further argued that the Commissioner of Police was not the competent authority to approve the recommendations of the review committee. It is admitted that the case of compulsory retirement of the applicant was approved by the Commissioner of Police. He further argued that it was a short cut to the proceedings being conducted against him. According to the learned counsel for the applicant, the compulsory retirement is by way of punishment and therefore Article 311 of the Constitution of India is attracted. He further stated that the

enquiry proceeding was quashed by this Tribunal. A copy of this judgement was summoned and has been placed before this Tribunal. Quashing of charge-sheet in the enquiry is not permissible in the light of various judgements of the Hon'ble Supreme Court now. The learned counsel appearing on behalf of the respondents placed only the relevant records of the screening committee and the review committee which recommended compulsory retirement of the applicant.

5. The basic question is whether the order issued by the competent authority is by way of punishment or not as argued by the learned counsel for the applicant. Law has been laid down by the Hon'ble Supreme Court in case of Satish Chandra Anand Vs. UOI. Termination of service by compulsory retirement in terms of either Rule 48 of the CCS(Pension) Rules or 56(J) of the Fundamental Rules does not tantamount to the infliction of punishment and as such it does not attract Article 311 as has been held by the Hon'ble Supreme Court as back as in 1954 in case of Sham Lal Vs. State of UP AIR 1954 SCC 639. In either of the two cases, termination of service did not carry with it the penal consequences of loss of pay or allowance under rule 56(J) of the FRs or under Rule 48 of the CCS(Pension) Rules. The Hon'ble Supreme Court has held that it is true that the misconduct, negligence or inefficiency or other disqualification may be a motive or a fact which influences the Government to take action under the terms of contract of employment or specific service rules. Nevertheless, if a right exists under the terms of contract to terminate the service by way of compulsory retirement, the motive operating

in the mind of the Government is irrelevant as has been held by the Chief Justice Chagla of Bombay High Court in case of Shrinivas Ganesh Vs. UOI AIR 1956 (Bombay) 455.

6. In short, if the termination of service is founded on the right flowing from contract or the service rules, then *prima facie* the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. A perusal of the impugned order shows that it is an order ~~or~~ simpliciter and there is no stigma attached to the applicant affecting his future career. He had completed more than 38 years of service. The right flows from Rule 48 of the CCS(Pension) Rules and also from 56(j) of the FRs and the contract of employment has been terminated under the specific rules, which has been quoted in the order at Annexure A-2 of the paper book, i.e. Rule 48 of CCS(Pension) Rules. If any stigma had been attached in the order, it would have been treated as a punishment.

7. A constitution Bench of the Hon'ble Supreme Court in Champak Lal Vs. UOI AIR/SC 1964 1854, it has been held that where the appointment is liable to be terminated after giving one month's notice on either side and the termination takes place without assigning any reason and without casting any aspersion, Article 311 of the Constitution is not attracted. The assertion that the respondents adopted a short cut is not correct. Even if a regular DE is launched and subsequently the same dropped and recourse is taken either to Rule 56(j) of FRs or Rule 48 of

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the CCS (Pension) Rules, it can not be faulted. The Hon'ble Supreme Court has clarified in the case of State of Bihar Vs. Gopi Kishore Prasad 1960 SC 688 and also in State of Orissa Vs. Ram Narain Das AIR 1961 SC 177, Madan Gopal Vs. State of Punjab AIR 1963 SC 457 and Jagdish Mitter Vs. UOI AIR 1964 SC that such a regular DE though contemplated and started was not held against the appellant and no punitive action was taken against the person and there can be no question of such a case being governed by Article 311(2) of the Constitution. It was further held that it is only when the Government decides regular DE, concludes it and inflicts one of the major penalties, i.e. dismissal, removal or reversion that the Government servant gets protected under Article 311. If the order visits the Government servant with any evil consequences or casts aspersions against his character or integrity, it must be construed to be by way of punishment no matter whether he is in permanent or temporary service or he is being retired compulsorily. If the order is an order simpliciter without casting any aspersions and it is not by way of punishment, Article 311 is not attracted. The same view was reiterated in case of R.S. Sial Vs. State of UP, AIR 1974 SC 1317. This was elaborately dealt with by a Constitution Bench comprising seven Hon'ble Justices of the Supreme Court in Shamsher Singh Vs. State of Punjab AIR 1974 SC 2192. The fact of holding or not holding an enquiry is not material. What is material is whether the order is by way of punishment. This view had already been clarified in case of P.L. Dhingra Vs. UOI AIR 1958 SC, wherein



it was held that termination of service by compulsory retirement in terms of specific rules regulating the conditions of service does not tantamount to infliction of punishment and does not attract Article 311(2) of the Constitution.

8. The law has been finally enunciated in all its ramifications in case of Baikunth Nath Das Vs. Chief District Medical Officer, Baripada JT 1992(3) SC 1, that (i) 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 competent authority after forming his opinion that it is in the public interest to retire a Government servant compulsorily. The order is based on the subjective satisfaction of the competent authority; (iii) Principle of natural justice has no place in the context of order of compulsory retirement. The order can be subject to judicial scrutiny only when it shows any malafide or it is arbitrary in the sense that no reasonable person would form requisite opinion on the given material or when it is found to be perverse; (iv) the Government or the review committee will have to consider the entire service record before forming the opinion to retire a person compulsorily.

9. We have carefully gone through the records. The review committee was duly constituted which considered the case of the applicant. It is true that in addition to indifferent remarks, adverse remarks and censure, there were serious doubts about his integrity for which an enquiry was also launched which was quashed by the Tribunal. The applicant had already put in 38 years





of service and if the respondents found that his integrity was doubtful and without resorting to DE they decided to retire him compulsorily under rule 48 of the CCS(Pension) Rules, the court can not interfere with this order, particularly when the order passed is an order simpliciter and it casts no aspersions or attaches no stigma to the applicant. The contention of the learned counsel for the applicant that the Police Commissioner was not competent to approve the proceedings of the DFC is not tenable. The Police Commissioner is the Head of the Department and there is no other officer in case of Sub-Inspector who is competent to pass the final order. The Police Commissioner is the authority who has to approve the proceedings of the review committee, which recommended his compulsory retirement and this review committee consisted of two ACPs and one Addl. DCP, who is equivalent in rank to that of the Deputy Commissioner, who is shown as the appointing authority for officers of the rank of Sub-Inspector. If an officer of the rank of DCP or ACP is associated with the review committee, in that case it is only the Police Commissioner who has to approve the proceedings of the review committee and he is the final authority to dispose of the representation if any filed by the applicant. This procedure has been followed by the respondents and as such we do not find any fault either in the procedure or in the order of compulsory retirement, which as stated above, is an order simpliciter and has been passed under rule 48 of CCS(Pension) Rules.

10. The order is, therefore, founded on the specific rule regulating the service conditions of

the applicant and, as such, this can not be interfered with. The application, therefore, fails and is dismissed but without any order as to costs. It is hoped that Police Commissioner will dispose of the representation/appeal, if any, filed by the applicant, in accordance with law.



(Dr. A. Vedavalli)
Member (J)



(B. K. Singh)
Member (A)

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