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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO.537/1991

DATE OF DECISION : 13.03.92

SHRI V.B. TAWAKLEY

...APPLICANT

VS.

UNION OF INDIA & ANR.

...RESPONDENTS

CORAM

SHRI P.C. JAIN, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI G.K. AGGARWAL

FOR THE RESPONDENTS

...SHRI P.H. RAMCHANDANI

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, since retired as Scientist-E by virtue of the impugned order dt.19.2.91 (Annexure A1), was born on 16.8.33 and joined as Junior Scientific Assistant in July, 1954. The applicant was given promotion in due turn as Senior Scientific Assistant in June, 1957, as Junior Scientific Officer in February, 1959, Senior Scientific Officer Grade-II Group-A in February, 1962, Senior Scientific Officer Grade-I Group-A in November, 1965, Principal Scientific Officer/Scientist-D Group-A in March, 1976 and Scientist-E Group-A in July, 1981. The applicant

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did M.Sc. in Mathematics in first division from the University of Delhi and in 1960 he did his doctorate in Ballistics from the same University.

2. In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the impugned order dt.19.2.91 which has been passed under Article 459(h) of Civil Service Regulations, retiring the applicant prematurely after the recommendations of the Screening Committee on his having crossed the age of 50 years on 16.8.1983.
3. The reliefs claimed in this application are to set aside the order dt.19.2.91 and for a declaration to the effect that the applicant continues in service with full wages with all consequential benefits and arrears of pay with interest @ 23% p.a.
4. The applicant in this application has alleged that the provisions of Article 459(h) of the CSR as also the provisions of Fundamental Rules do not apply to him in view of the specific provisions in the OM issued by the Ministry of Defence, Department of DRD, dt.24.12.1985 (Annexure A2). It is stated in the application that the provisions of effecting premature retirement are laid down only in the above cited OM and in view of this fact, the relevant provisions of CSR 459(h) do not apply to the applicant and any order passed by the President under those provisions is

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illegal and void abinitio. It is further stated that the OM dt.5.1.78 (Annexure A3) issued by the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) lays down the ^{guidelines to be} ~~the~~ followed to retire prematurely in 'public interest'. It is further stated that the applicant was never considered to be ineffective, unfit or incompetent for the present post. The applicant has ever been active in the profession and performing the scientific/technical work which has also been published. It is further stated that the applicant has also published some papers along with one Dr.Jain in an international journal. Further it is stated that the applicant was to date considered fit to continue in the present post and ^{found} ~~was eligible~~ for assessment for promotion from Scientist-E to Scientist-F vide Defence SC Centre No.0204/IC/Estt/DSC dt.15.3.90 (Annexure A5). Thus, according to the applicant, the impugned order has not been passed correctly and the procedure prescribed in the OM dt.5.1.78 (Annexure A3) has not been followed; that no adverse entry has ever been communicated to the applicant and that the provisions of CSR 459(h) do not apply to the case of the applicant.

5. The respondents contested the application and in their reply stated that ^{the} ~~provisions~~ of para 459(h) of CSR corresponding ^{to} ~~FR~~ 56(j) provide that, in the public interest, appropriate

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authority has absolute right to retire the Government servant by giving him notice of not less than 3 months in writing or 3 months' pay and allowances in lieu of that notice if he is in Group-A or B service or post after he attains the age of 50 years, having entered in the service before attaining the age of 35 years, and in any other case after he has attained the age of 55 years. The cases of all Group-A and B officers of DRD are reviewed to determine their suitability for retention in service beyond the age of 50/55 years. The Review Committee headed by Secretary, Department of DRD, Ministry of Defence, recommended that the applicant be retired from service in public interest. The appropriate authority after due consideration approved the recommendation of the Review Committee and ordered the retirement of the applicant in public interest. The decision ^{to have} said ^{been} taken by the committee in public interest, in conformity with the existing rules and guidelines on the subject, and that no injustice has been done to the applicant. It is further stated that the provisions of OM dt.24.12.85 referred to by the applicant (Annexure A2) supplement the provisions of Article 459(h) of the CSR.

6. We have heard the learned counsel for the parties and have gone through the record of the case. We have also

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got the personal file of the applicant summoned.

The OM issued by the Ministry of Home Affairs on 5.1.78

(Annexure A3) specifically lays down the procedure as

follows :-

- "(a) Employees of doubtful integrity or 'ineffective' (that is unfit/incompetent to hold the present post) may be prematurely retired.
- (b) No employee be retired premature, if his service during preceding 5 years was satisfactory.
- (c) Review for premature retirement be done 6 months prior to attaining the age of 50 or, as the case may be, 55 years and, if cleared, the employee would ordinarily continue till normal age of superannuation, unless fresh review is considered necessary and is made.
- (d) Before retiring premature, his suitability for lower post be considered and, if suitable, he be retained in the lower post."

The report of the Review Committee also goes to show that they have also referred to the above circular in following the procedure for effecting premature retirement in the public interest. The learned counsel for the applicant has contended that the procedure has not been followed in letter and spirit and there was no objective analysis of the whole record of service and the finding based on the 5 years' ACR of the applicant from 1985 to 89 do not lead to the conclusion which the Review Committee has arrived at.

7. As regards the contention of the learned counsel for the applicant that the provisions of CSR 459(h) do not apply, there is no substance in the same as the Ministry of Defence and Deptt. of DRD issued OM No.7(3)/85-D(R&D) dt.10.2.86 in which

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para-2 lays down as follows :-

"Notwithstanding anything contained in para 1 above, the rules and orders governing Central Government employees regarding premature/voluntary retirement by Government/Government servant under FR 56 and the instructions issued by Government thereon from time to time, shall continue to be followed in respect of all scientific and technical personnel of Defence Research and Development Service."

The argument, therefore, has no force and the case of the applicant could have been processed under the provisions of ^{the} CSR 459(h).

8. The relevant law regarding interference by the Court in the finding of the Review Committee has been recently by the Hon'ble Supreme Court laid down in the case of Sh Baikuntha Nath Dass Vs. Chief DMO, 1992 (2) Judgement Today p-1 and the principles have been summarised in para-34 of the report, which is as follows :-

"(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion or 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) 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 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.

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(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. "

The Hon'ble Supreme Court also in the case of Jayanti Kumar Sinha, 1989 Supplement (1) SCC p-12, regarding the matter of premature retirement under Article 459(h) of CSR upheld the judgement of the Central Administrative Tribunal, Hyderabad Bench where the Original Application of Jayanti Kumar Sinha was rejected. The Hon'ble Supreme Court observed as follows :-

"Ordinarily when the entries relate to specific instances leading to adverse entries, the communication thereof is sent to the officer concerned with a view to providing an opportunity for improvement of performance. The entries which we have extracted above are mostly based upon general assessment of the performance. As we have already pointed out, he was communicated years back the general disapproval of his method of working. We are satisfied that the review proceedings were in consonance with the guidelines framed by the Government."

In the case of S. Mareshwar Rao Vs. UOI 1989 SCC Supplement Vol.2 p-248 and Baidyanath Mahapatra Vs. UOI, 1989 (4) SCC 664, the Hon'ble Supreme Court also considered the matter and allowed the Writ Petition granting the relief to the petitioner striking down the order of compulsory retirement on the ground of arbitrariness and unreasonable application of the ACR of the petitioner.

9. In the latest judgement of Baikuntha Nath Das (supra), the Hon'ble Supreme Court clearly held, referring to the earlier judgements of the Supreme Court and the various High Courts, that High Courts and the Supreme Court would not examine the

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matter of compulsory retirement of a person as an appellate court, but they may interfere if they are satisfied ~~that~~ the impugned order is passed malafide or ^{it} that is based on no evidence or 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.

10. The whole of the ACRs ^{do not} appear to have ^{been} seen by the Review Committee. Firstly, in whole of the ACR, starting from 1954, the year of ^{applicant's} joining the respondent as JSA, till the date of impugned order, there has been no adverse remark against the applicant and his overall assessment throughout the tenure of service has been mostly very good and often good. Taking into account only ^{from the date of his promotion} the performance as Scientist-E since July, 81, in June, 82, the entry was made by the reporting and the reviewing officer in the ACR where it is written that the applicant is a very intelligent and sincere worker, he is thorough in his professional knowledge, he has originalities in approach, he is highly cooperative. The reviewing officer further added that he is a conscious and sincere mathematician, who has specialised in the area of Ballistics and overall grading is very good. The annual remarks for the year 83 also speak high of the applicant and the overall assessment is good. In 1984, the remarks are equally good and overall assessment is very good.

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11. The annual remarks considered by the Review Committee pertain to the years 1985, 86, 87, 88 and 89. General assessment of the applicant in these years is as follows :-

A	B	C
Year-85 Date of entry in ACR (9.6.86) 'X' Reporting Officer (16.6.86) 'Y' Accepting Officer	Overall assessment Good Officer diligent, sincere straight forward. Officer contributed fairly well.	Elsewhere reported. Officer possesses fair degree of originality.
Year-86 Date of entry in ACR (12.2.88) 'X' Reporting Officer 'Y' Accepting Officer (6.3.89)	Overall assessment Good. Very good by Accepting Officer 'Y' on 6.3.89. The officer has not been very responsive to the need of a growing laboratory. Not shown significant initiative, he has carried out the assigned tasks quite satisfactorily.	Fairly knowledgeable in the limited field of exterior ballistics and related optimization problems.
Year-87 Date of entry in ACR (19.4.89) Same 'X', both Reporting & Accepting Officer CCR&P 21.3.90	Overall assessment Good. Despite the last ^{best} opportunity has not been able to contribute to growth of his group. Tends to be indifferent, lacked focus.	Knowledge fairly good in the filed of optimization technique.
Year-88 Date of entry in ACR (15.7.89) Same 'X', both Reporting & Accepting Officer CCR&D 10.8.89	Overall assessment Good. Despite adequate opportunity given to him, has not been able to contribute to growth of his group. Tends to be indifferent, lacks adequate focus at times.	Fairly broad in the field of optimization technique. Not considered adverse by DOP when discussed by CCR&D(K).
Year-89 Date of entry in ACR (17.10.90) Same 'X' both Reporting & Accepting Officer. CCR&D 9.11.90	Overall assessment Good. Officer contributed to the administrative and peripheral activities. Could have contributed better had he taken keen interest in his professional field.	

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12. Thus in the ACRs. for the above said years, in columns under various headings, there are no glaring adverse remarks which could give an impression that the applicant has outlived his utility. For the year 1988, there are certain shortcomings pointed out, but the Chief Controller (R&D) who is the controlling authority has consulted the Department of Personnel and it was found that the entries given by the Reporting and Accepting Officer in July, 1989 for the year 1988 cannot be said to be adverse. Thus taking the entries in the ACRs. of the years 1985, 86, 87, 88 and 89, the committee outrightly came to the conclusion that on the basis of these annual character rolls of the applicant, in the interest of public, he should be retired, but the ACRs of the applicant do not at all give any such impression; even in these 5 years basically in the years 1985 the entry of which was given in June, 1986, it is expressly written that the officer is diligent and sincere and has contributed fairly well by way of his interaction with DRDL in solving some of their mathematical problems. The grading of the officer is good. For the year 1986, the entry of which was given in 1988, the reviewing officer has given the entry very good and there is no adverse comment except that it is observed that the officer has not shown significant initiative, but at the same time, it is written quite that he has carried out the assigned tasks / satisfactorily.

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For the year 1987, the entry of which was given in April, 1989, by the same reporting officer, who gave the entry for the year 1986 graded the officer as good. Here there is a comment that the officer tends to be indifferent to the tasks assigned to him and lacks focus. This entry was not communicated to the applicant and the integrity of the applicant was never doubted. The officer has commented that the quality of work is good, knowledge of sphere of work is fairly good. Thus the conclusion drawn by the reporting officer contradicted his own observations in the earlier parts of the report and that is why the reporting officer, who happened to be also the reviewing officer has graded the applicant as good. The entry for the year 1988 has not been judged to be adverse even by the Department of Personnel when the matter was referred by CCR&D(k). Though in this report, certain shortcomings of the officer were pointed out, but at the same time, the officer has been graded good. Here also the knowledge and sphere of work of the officer has been commented as fairly broad. For the year 1989, there is nothing adverse, though there is a comment that the officer could have done better. The Defence Science Centre considered the matter before the assessment board of 1990 for promotion of the applicant to Grade of Scientist-F and found the applicant eligible under the provisions of

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Rule 8(2)(d) of the DRDS Rules. The power to retire a Government servant compulsorily in public interest in terms of the said service rules is absolute provided the authority concerned forms an opinion bonafide that it is necessary to pass such an order in public interest. However, if it is made out that such a decision is based on collateral grounds or if the decision is arbitrary, it is liable to be interfered with by Courts. It is also clear that judges cannot substitute their judgement for that of the Administrator, but they are not absolved from the minimal view well settled in administrative law and founded on constitutional obligations. The limitation on judicial power in this area is well known and the Court is confined to an examination of the material merely to see whether a rational man may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest.

13. The Review Committee did not at all consider the following facts while assessing the retention in service of the applicant :-

- (a) Reporting Officer and Accepting Officer of the ACRs 1987, 88 and 89 is the same officer.
- (b) Accepting Officer has judged the overall performance as Very Good in 1986.
- (c) Entries in ACRs for the years 1987 and 1988 have been given in April, 1989 and July, 1989. It is also

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significant that CCR&D countersigned the entry in ACR of 1988 earlier on 10.8.1989 while the entry of 1987 was countersigned on 21.3.1990. These entries reflect certain shortcomings in the performance of the officer, but they were never communicated to the officer. However, the Department of Personnel was consulted, regarding the ACR entry of 1988 by CCR&D(K) and it was opined that the entry is not adverse, so need not be communicated. These entries have been given within a gap of three months.

(d) Certain comments meant to induce the officer on the quality of output are vague as noted below :-

1988	1986	1985
Hardly any progress in optimization of Rocket Trajectory	On the whole, quality of work moderate	A/C of work broadly factual, contribution to Rocket Trajectory.

(e) Directing capability in all these years have been broadly adequate.

(f) Integrity has been certified in all these years.

(g) Since 1954 to 1991, the officer has never been adjudged below Good, but adjudged often Very Good.

14. Thus the finding of the Review Committee, therefore, cannot be said to be based on objective analysis of the service record of the applicant and also lacks in proper application of mind and the conclusion drawn appears to be not based on facts and it can be said to be arbitrary.

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15. In view of the above facts, the application is allowed, the impugned order dt.19.2.1991 is quashed and set aside, and the applicant's compulsory retirement from service is set aside and the applicant shall be deemed to be continuing in service till he attains the age provided under the Notification dt.24.12.1985 (Annexure A2) unless otherwise he is not found fit according to extant Rules and service conditions applicable to the applicant. The applicant shall also be entitled to all the consequential benefits as if he has been in continuous service, which shall be paid to him within three months from the date of receipt of a copy of this Order. In the circumstances, the parties shall bear their own costs.

J.P. Sharma

(J.P. SHARMA)
MEMBER (J)

13.3.92

P.C. Jain
(P.C. JAIN)
MEMBER (A)

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