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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.7/91

New Delhi, this the 10th March, 1995

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

Shri Jagdish Parshad,
s/o Shri Kundan Lal,
r/o 363 A, Pradhan Marg,
Nirankari Colony,
Delhi.

... Applicant

By Advocate: Shri G.D. Gupta

Vs.

1. Union of India
through
Secretary,
Govt. of India,
Ministry of Home Affairs,
North Block, New Delhi.
2. The Lt. Governor,
Union Territory of Delhi,
Raj Niwas, Delhi.
3. The Commissioner of Police,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
4. The Addl. Commissioner of Police (Admn.)
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
5. The Deputy Commissioner of Police,
North District, Civil Lines,
Delhi.

... Respondents

By Advocate: Shri O.N. Trishal

ORDER

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

By the order dated 31.8.1989 under F.R. 56(J)(ii) the applicant was compulsory retired at the age of 57 years and 4 months. In this application, under section 19 filed on 21st December, 1990, the applicant has assailed the aforesaid order on a number of grounds praying for the

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grant of the reliefs for quashing the aforesaid order being wholly illegal and arbitrary and that the applicant is entitled to continue in service upto the age of superannuation i.e. upto the age of 58 years with all consequential benefits. The application was admitted by the order dated 4.1.91 and notice was issued to the respondents who contested the application denying the various averments made by the applicant in the original application. The applicant has also filed the rejoinder further reiterating the averments made in the original application.

2. The facts of the case are that the applicant was appointed as Constable in Delhi Police in April, 1950 and he was promoted to the rank of Head Constable in May, 1956 and was also confirmed in November, 1962 in his appointment. He was promoted as officiating ASI in November, 1967 but subsequently reverted in March, 1968 to his substantive post, again promoted as ASI in April, 1969 and was confirmed as ASI in February, 1972. He was also confirmed as Sub Inspector in July, 1977 having been earlier promoted on officiating basis in September, 1974. The date of birth of the applicant is 3.4.1932. The applicant had attained the age of 55 years in April, 1987. His case was sent to the Screening Committee. The Screening Committee after due examination of his service record has compulsorily retired the applicant w.e.f. 31st August, 1989 under Rule 48 of the CCS(Pension) Rules, 1972 by paying a sum equivalent of the amount of his pay plus allowances for a period of 3 months calculated at the same rate which he was drawing before his retirement.

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3. We heard the learned counsel of the parties and perused the A.C.R. of the applicant as well as report of the Screening Committee and the Review Committee. The contention of the learned counsel for the applicant is that the respondents have not complied with their own instructions which has to be followed in passing an order of compulsory retirement under FR 56(J)(ii). The relevant instructions of the Govt. of India dated 5.1.78 lays down that no employee should ordinarily be retired on ground of ineffectiveness, if he would be retiring on superannuation within a period of one year from the date of consideration of his case. It appears that the screening of cases were taken up on 9.5.89 and the Screening Committee consisting of DCP(North) as Chairman and Addl.DCP(North) and ACP(Hq.) as Members was constituted. A number of upper/lower subordinates who have completed 55 years of age or qualifying 30 years service were jointly screened by the aforesaid Committee. The review in respect of the applicant shows in Part II that the applicant was censured for indifferent performance in not controlling prostitution in his area for the relevant period 1.4.85 to 20.11.85 and the appeal preferred by the applicant was rejected by the Addl. C.P.(R) by the order dated 13.11.86. Regarding the other comments whether he was ever suspended or not or whether he is on list of doubtful integrity, the report is in the negative. It has also been commented in the said report that he was given 14 days PD as he was found slack on duty on the visit of P.M. in January, 1953. Besides the above, the censure conveyed to him because of running a brothel house in his area in the year 1985 already referred to

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above and he was also censured in the year 1985 that he brought 2 men in Police Station without making a DD report for them. There is no D/P pending against him at the time of screening in May, 1989. From the year June, 1950 to 1958 the applicant has been given certain PD for absence for a number of days and was also warned for his absence. After 1958, the only fault found was in the year 1985 when he was warned for absence on 23.3.85, warned for failure to check the black marketing in the cinema, warned for acquittal of case in September, 1987, He was warned for not complying the NDPS Act on 3.8.87 and was pulled to be careful in future in September, 1988. It is because of this material, the applicant was found to have been indifferent record of service, professional incompetence and moral turpitude he was recommended for compulsory retirement under Rule 48(1)(b) of the CCS (Pension) Rules, 1972. The Review Committee constituted on 22.8.89 has approved the report of the Screening Committee and the impugned order was passed.

4. The contention of the learned counsel for the applicant is that the applicant has maintained integrity beyond doubt and he has already been given appreciation by the Supervisory Officer. We have gone through the A.C.R. of the applicant and seen the reports of almost whole of service career of the applicant. The Screening Committee initiated its proceedings in May, 1989 and before the year ending 1.4.88 to 8.2.89 ^{the} applicant has been adjudged as very good officer. The Reporting Officer as well as Reviewing Officer has commented his performance as good and also commented that he is an intelligent and diligent officer and punctual in writing C.Ds and completing

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investigation. It is also said that he is very good I.O. For the period from 26.7.87 to 31.3.88, the Reporting Officer has commented that he is well experienced and seasoned officer. He is working as Division Officer consisting Bara Hindu Rao, a very communally sensitive area. He has very good knowledge about his B.Cs and criminals. He is expert in investigation work. He has worked out and detected a large number of property cases. He can handle the investigation of heinous crime cases independently. Work and conduct remained excellent. The Reviewing Officer has also agreed to with the above report. For the period from 1.4.87 to 25.7.87 it is reported that his conduct remained above average. His organising ability and controlling ability are praiseworthy but his initiative was of moderate order. He was good in both prevention and detection and was a reasonably successful I.O. This has also been approved by the Reviewing Officer. For the period from 1.4.86 to 31.3.87 it is reported that the S.I. is very good in investigation and has knowledge of records and registers maintained in the Police Station, keeps guiding the new officers in investigation work. He has also conducted general power of control and organising ability as excellent his performance. His personality and initiative is very good, power of command is excellent, preventive and detective ability is very good. His working experience of criminal law and procedure is excellent. This remark has also been accepted by the Reviewing Officer. For the period from 21.11.85 to 31.3.86 it is commented that the work and conduct of the S.I. remained satisfactory. His working experience of criminal law and procedure is very good. He is reliable. This has also been agreed to

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by the Reviewing Officer. For the period from 1.4.85 to 20.11.85 it is reported that his moral character has been verified to be very good. His reputation also is said to be very good. His preventive and ^{-ive}detectability is excellent and working experience of criminal law and procedure is very good. It is commented that he is a successful and bold officer. He puts in a lot of labour in his work. However, the Reviewing Officer has categorised as 'B'. He was censured for indifferent performance in not controlling prostitution in his area. For the period from 1.4.84 to 31.3.85, his moral character has been verified to be very good. His personality and initiative, power of command and working experience of criminal law and procedure is commented as very good. His general power of control and organising ability is excellent so also his preventive and detective ability. He is a hard working and dependable officer. He has shown keen interest in his job and knows the job fully well. This remark of the Reporting Officer has been agreed to by the Reviewing Officer. For the period from 1.4.83 to 31.3.84, the same good entry has been given to him as for the period from April, 1984 to March, 1985. The Reviewing Officer has also agreed to with the same.

5. It would be therefore evident that in the annual confidential records of the applicant for the last six years before the impugned order except for the period from 1.4.85 to 20.11.85 and for the period from 21.11.85 to 31.3.86, there is no adverse comments. In the year 1985-86 also the applicant has been categorised as 'B'

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and he was censured for indifferent performance in not controlling prostitution in his area. In spite of this, the Reporting Officer has commented high about him and his work and conduct remained satisfactory. In the subsequent years of 1986-87, 1987-88 and 1988-89, he has been given very good remarks. Merely because he was given a censure entry in the year 1985 for some slackness in controlling the prostitution in his area it cannot be said that the applicant has become totally a deadwood particularly when he has attained more than 57 years of age and almost about a year was left of his reaching the age of superannuation. The Screening as well the Reviewing Committee though considered whole of the records of service and still passed the order of retiring him prematurely when he has completed more than 57 years of service. This is totally infraction of the instructions laid down by the DOPT in the O.M. of 1978. In that instructions it is laid down (Annexure A-20, Para 3(d)) that " no employee should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case." The date of birth of the applicant is 3.4.1932. His normal date of superannuation would be 30.4.1990. He was compulsory retired with 3 months' notice w.e.f. 31.8.89. The screening of the cases were taken up on 9.5.89. From that date only less than a year is left of the age of superannuation of the applicant thus his consideration by the Screening Committee itself should have been resorted to in exceptional cases and that exceptional case is not revealed from the whole of the service record of the applicant. It is needless to mention

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that since the applicant joined his service he has never been punished for major penalty and was never suspended, only certain PDs were given to him on his unauthorised absence from duty for a few days. Against the aforesaid, the applicant alongwith O.A. has filed an Annexure A-16 showing the list of Certificates of Commendations given to him at various points of time with full details and 154 such certificates have been mentioned and he has also been given certain cash awards. This is the position since 1957 till 1988. He was given promotion in his due turn to a higher rank. Now coming to the law on the point, the recent decision of the Hon'ble Supreme Court in the case of Baikuntha Nath Das & Anr. Vs. Chief D.M.O. Baripada reported in JT 1992(2) SC 1 has crystallized law regarding interference by the Court in matters of compulsory retirement passed under FR 56(j)(ii). The conclusion drawn by the Lordship is reproduced below:-

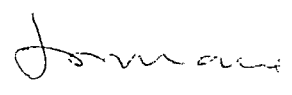
- (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective 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 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 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

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7. The learned counsel for the applicant has also referred to a fact that the applicant should have been considered for the lower post also which has not been done in his case and has referred to a decision in T.A.No. 29/88 decided by the Principal Bench on 2.12.92 where the order of compulsory retirement was struck down only on the ground that no attempt has been made to consider the case of the officer concerned for reverting him to the lower post as provided in proviso 2 to FR 56(j). This is also one of the lacuna in the proceedings of the Screening Committee and Reviewing Committee that when the applicant had only about less than a year to reach the age of superannuation and the service record does not show that he is deadwood and his integrity had always been certified, if he was considered unfit for the post of Sub-Inspector, he would have been considered on the lower post of A.S.I. The learned counsel for the applicant has referred to a decision of Hon'ble Supreme Court in the case of Sardul Singh reported in 1991(16) ATC 97 SC.

8. In view of the above facts and circumstances, the application is allowed. The order of compulsory retirement of the applicant dated 31.8.89 is quashed and the applicant shall be deemed to be in service till the age of superannuation and shall be entitled to the full pay and allowances for that period less the pension he has drawn. His pension shall also be revised accordingly and refixed taking his normal age of superannuation and other retirement benefits will also be available to him in that respect. Cost on parties.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)