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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.191 of 1993 decided on 8.2.99

Name of Applicant : Shri Heera Singh Jyotiyan

By Advocate : Shri B.S.Maine

Versus


Name of respondent/s Union of India through Secy..
Ministry of Railways & others

By Advocate : Shri P.S.Mahendru

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A.Vedavalli, Member(J)

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. -~~Yes~~/No


(N. Sahu)
Member (Admnv)
8.2.99

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 191/93

New Delhi, this the 8th day of February, 1999

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A. Vedavalli, Member (J)

Shri Heera Singh Jyotiyana
Ex-Chief Booking Supervisor,
Western Railway, Birawar.

.....Applicant

(By Advocate Shri B.S. Mainee)

Versus

Union of India: Through

1. The Secretary,
Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi.
2. The General Manager,
Western Railway, Church Gate,
Bombay.
3. The Divisional Railway Manager,
Western Railway, Ajmer.

.....Respondents

(By Advocate Shri P.S. Mahendru)

ORDER

By Mr. N. Sahu, Member (Admnv) -

The applicant was appointed as Assistant Coaching Clerk. by the Divisional Commercial Superintendent (E), Ratlam on 23.1.1960. While working as Head Clerk he received a commendation in 1983-84 in Ajmere Division. He was promoted as Chief Booking Supervisor (Rs.2000-3200) w.e.f. 1.1.1984. A charge-sheet dated 22.5.87 was issued to him. In the absence of statement of defence, he was punished by with-holding one set of privilege pass in one calender year i.e. 1988 by punishment order dated 11.11.87. For the period from 1.4.87 to 31.3.88, an adverse entry was communicated on 2.1.89. He did not make any representation against the said adverse entry. His alleged filing of the representation has


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been examined at length and at para 6 of the Order dated 7.6.91 in OA-1971/90 the Bench did not lend any credibility to this claim.

2. The applicant filed an earlier OA-1971/90 and the same was remanded for disposal of his representation. Order dated 7.6.91 disposing of the OA is as under:


"11. The applicant continues to be in service under the interim orders passed by the Tribunal. His representation/appeal dated 5.7.90 is also admittedly still pending for disposal. In view of this, as also in the light of the foregoing discussion, the O.A. is disposed of in terms of the directions that the applicant's representation dated 5.7.90 and his further supplementary representation dated 13.8.90 in continuation of the earlier representation against the impugned order/notice for premature retirement dated 27.6.90 should be disposed of by the respondents in accordance with the procedure prescribed, within a period of three months from the date of receipt of a copy of this order. Until this is done and for a further period of 30 days, the impugned order shall not be given effect."

3. We have examined the records. The Railway Board also examined the appeals dated 5.7.90 and 13.8.90 of the applicant against the order of pre-mature retirement served upon him on 27.6.90 under the provisions of Rule-1803(a)-R-II. The Board found that the applicant had been punished repeatedly "for careless, in-efficient and improper working". He had been punished under the D&A rules on various proven charges imposed on him on 31 occasions. The Board recorded that his overall performance was not satisfactory and his retention in service would not




be in the public interest. The Railway Board's order is dated 24.11.92. In the counter affidavit it is stated that the applicant had been punished five times for careless working and two times for negligence of duty. He was punished for pilferage of machine parts valued at Rs. 823/- from one case. He was held responsible for shortage of one bundle of brass wires. He had to pay the claims two other times amounting to Rs.1043/- and Rs.1896/-. The respondents disposed of the representation and upheld the order of compulsory retirement.

4. The grievance of the applicant is that the respondents ought to have given effect to the impugned order after a lapse of 30 days but without waiting for the said period the applicant had been compulsorily retired from 19.11.92. Shri Mainee contends that the respondents have not complied with the instructions of the Railway Board dated 15.11.79 and 10.4.86. The counsel also placed on record the confidential letter dated 17.10.89 by the Railway Board to General Manager on the guidelines for compulsory retirement under Rule 1802, 1803 and 1804 and para 620 (II) of the Manual of Railway Pension Rules relating to pre-mature retirement. He says these guidelines were not complied with. According to the criteria of 15.11.79, an officer whose integrity is doubtful or officers who are found to be ineffective, will be retired. It is further provided that "While the entire service record of an officer should be considered at the time of review, no officer should ordinarily be retired on grounds of



ineffectiveness if his service during the preceding 5 years or where he has been promoted to a higher post during that 5 years period, his service in the higher post has not been found unsatisfactory." It is also provided that "No officer 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." This clause is, however, not applicable to the case of the applicant as he had more than one year for retirement on superannuation. On receipt of the recommendations of the Committee, in every case where it is proposed to retire a Railway servant, the appropriate authority is required to record in the file that it has formed its opinion that it is necessary to retire the Railway servant in the public interest. The appropriate authority should bonafide form an opinion that it is in public interest to retire the officer and this decision should not be an arbitrary decision or should not be based on collateral grounds. The consolidated instructions also stipulate the procedure for consideration of representations made by a Railway employee where he has been served with a notice/order of premature retirement, within three weeks from the date of service of such notice/order. The next contention of Shri Mainee is that a Govt. servant can be compulsorily retired only on the ground of doubtful integrity and ineffectiveness. He states that there is no material to establish either of the two charges. There were no disciplinary and vigilance proceedings pending against him. He further stated




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(5)

that the appellate authority had not applied his mind to the points raised by him in appeal. The applicant was not considered for lower post as per instructions. Shri Mainee relied on the following cases:

1. AISLJ 1991 (1) 237 - Sheela Tripathi v. State of Rajasthan.
2. ATR 1991 (2) 347 - D.C. Limbachia v. Union of India & Others.
3. AISLJ 1995 (2) 57 - Sarat Kumar Dash & Ors. v. Biswajit Patnaik & Ors.

5.1 In ATR 1991 (2) CAT 347, the applicant while posted as Assistant Engineer was retired on attaining the age of 58 years under FR-56 (j)(i). The Bench found "There are no legally surviving adverse remarks regarding the applicant's performance in service." There was no material to retire the applicant on grounds of doubtful integrity and he was not considered for a lower post. That was how the impugned order was quashed by the C.A.T. Ahmedabad Bench.

5.2 In the case of Sheela Tripathi (supra) it is held that once a termination is set aside and a suit for declaration of continuance in service is decreed, the employee is entitled for recovery of all past and future emoluments.



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(6)


5.3 In the case of Kewal Kishore (1995 (2) 58) the Principal Bench held that the effect of adverse entries or penalties are washed away by promotion. The applicant's counsel laid considerable stress on this case because he stated that the promotion having been issued the earlier punishment stood wiped out.

5.4 In support of his stand he also cited a decision of the Principal Bench in OA-2009/90 by an order dated 27.2.98.

6. After notice, the respondents state that action against the applicant had been taken only after allowing a further period of 30 days to him. It is stated that there is no provision for considering the applicant to a lower post. Para 4.32 of the counter is as under:

"It is submitted that the third sentence of para 11 3(B) as also para 6(i) and 6(ii) of Railway Board's letter dated 15.11.1973 in connection with the provision regarding considering the employee in the lower post have been deleted as a whole as conveyed vide GM (M)'s letter No.EP 949/0 Vol.III dated 05.02.1990."

7. We have carefully considered the submissions of the learned counsel. In the cases of Baikuntha Das & Another vs. CDMO, Baripada & Another (1992 (2) SCC 299) and I.K. Mishra vs. Union of India & Others (JT 1997 (6) SC 390) the following principles are laid down:-



- (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 post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
- (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 the basis for interference. Interference is permissible only on the ground mentioned in (iii) above."

(8)

8. Shri Mainee's case is that while the entire service record of an officer should be considered at the time of review, no officer should ordinarily be retired on grounds ineffectiveness if his service during the preceding five years had been found to be satisfactory.

9. We have carefully considered the various submissions and we are of the view that the order of compulsory retirement does not call for any interference. The Review Committee's recommendation was sent to the Railway Board for further decision. The Railway Board by their letter dated 20.10.92 advised that the decision taken to retire the applicant is fully borne out by his service record and is in the public interest. Hence the AGM Western Railway's decision to reject the appeal of the applicant against the order of pre-mature retirement served upon him on 27.6.90 is upheld by the Board. This was not a case where the impugned order is passed malafide. It is not a case where the decision has been taken on no evidence. Thirdly, it is not an arbitrary decision. All the guidelines laid down by the Hon'ble Apex Court in Baikunthnath's case have been satisfied. Having been penalised for 31 times for carelessness, negligence and improper working and as the adverse remark stood unchallenged (see the Tribunal's earlier order), as the decision of the Railway Board to retire the applicant is a bonafide decision in public interest and as there is no provision to consider such an official to a lower post and even if such a provision exists, as it is in

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our view not mandatory but discriminatory. Once an official is compulsorily retired in public interest by the competent authority, there is no justification to consider him to a lower post, because his continuance even in a lower post will still be prejudicial to public interest. Assuming that such a rule exists, that rule cannot be applied where the order of compulsory retirement is issued in public interest. We do not find any merit in this O.A.

10. The OA is dismissed. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

Karashishan

(N. Sahu)
Member (Admnv)

cc.