

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2238/1993

New Delhi this the 19th day of March, 1999.

HON'BLE SHRI JUSTICE S. VENKATARAMAN, VICE CHAIRMAN

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

Jai Singh S/O Mata Prasad,
previously working as J.S.O.
in A.D.R.D.E., Agra
under D.R.D.O.,
Ministry of Defence,
New Delhi,
R/O H.No.50/1, Gyas Pura,
Shah Ganj,
Agra (UP).

... Applicant

(By Shri J. C. Madan, Advocate)

-Versus-

1. Union of India through
Secretary, Department of
Defence Research & Development,
Ministry of Defence,
South Block,
New Delhi.
2. The Director of Personnel,
Defence Research & Development
Organisation, Ministry of Defence,
2nd Floor, Sena Bhawan, 'B' Wing,
New Delhi-110011.
3. Shri J. K. Tyagi,
Scientist 'F',
Aerial Delivery R&D Estt. (ADRDE),
Ministry of Defence,
D.R.D.O., Station Road,
Agra Cantt. (UP)-282001.

... Respondents

(By Shri Harish Chander, Dy. Director, D.R.D.O.,
Departmental Representative)

O R D E R

Shri Justice S. Venkataraman :

The applicant in this case is aggrieved by the
order dated 1.2.1993, Annexure A-1, passed by the
President retiring him from service in exercise of the

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powers conferred by clause (h) of Article 459 of Civil Services Regulations on his attaining the age of 50 years on 1.2.1993.

2. The applicant joined service as a Junior Scientific Assistant Grade II on 20.4.1966. He was promoted to Grade I on 31.3.1970 and subsequently promoted as Senior Scientific Assistant on 15.3.1980. On 10.4.1986, after assessing his performance, a high level DPC promoted him to the post of Junior Scientific Officer (JSO) which is a Group 'B' gazetted post.

3. The main grounds ~~urged~~ on the basis of which the applicant has assailed the impugned order is that it is totally arbitrary and without any basis; that the third respondent under whom the applicant was working after his promotion as JSO was prejudiced and biased against him as he belonged to SC community; that the third respondent deliberately entrusted him with totally non-scientific work such as to streamlining the functioning of the communication system of the office, the task of EPABX, to look after the repair and maintenance of intercom sets, telex machines, telephones etc., the duty of checking and clearing the bills for payment pertaining to EPABX, telex and telephones, ^{but} though he had protested in that regard; that he was also required to perform the duty of a telephone operator and doing the job of ledger work etc.; that the third respondent who had developed prejudice against him had influenced the action of respondents 1 and 2 in passing the impugned order. He

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has contended that throughout he had worked efficiently and that because of his efficiency and devotion to duty, he had been promoted as JSO; and that the impugned order has been passed without any justification.

4. The respondents 1 and 2 in their reply have pleaded that in accordance with Article 459 (h) C.S.R., the cases of all Group 'A' and Group 'B' officers of D.R.D.O. are reviewed to determine their suitability for retention in service beyond the age of 50/55 years, as the case may be; that on the applicant attaining the age of 50 years his case was submitted to the review committee headed by the Secretary, Department of Defence Research and Development, Ministry of Defence; that the committee recommended that the applicant deserved to be retired from service in public interest; that the appropriate authority, after considering the recommendation of the review committee, ordered retirement of the applicant in public interest; and that accordingly, the applicant was retired w.e.f. 10.2.1993, after paying him three months salary. They have also pleaded that the applicant submitted representation dated 19.2.1993 against his premature retirement; that the representation was considered by the representation committee headed by the Secretary, Department of Education and that committee after examining the representation, recommended its rejection and that accordingly, the competent authority after considering that recommendation and the record of service of the applicant, rejected the applicant's representation.

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The respondents have denied the allegations of mala fide against the third respondent and have contended that such allegation is baseless. According to them, the performance of the applicant was not up to the mark and his over all record was such that the review committee found that it would not be in public interest to retain him in government service.

5. The learned counsel for the applicant contended that after the applicant was promoted as JSO, he had to work under the third respondent, a Senior Scientist; that the third respondent was prejudiced against the applicant and that it is at his instance the impugned action has been taken. The reason given for the third respondent to develop prejudice against the applicant is that the applicant belongs to SC community. The learned counsel for the applicant pointed out that the third respondent has not filed any reply to the application and as such, the allegation made by the applicant will have to be accepted. The impugned order is passed not by the third respondent but by respondents 1 and 2. As such, merely because the third respondent has not chosen to file a reply, it cannot be straightway concluded that the allegation of mala fides made by the applicant is true and on that basis, strike down the impugned order. It is very easy to make allegations of mala fides by one who is affected by an order, as that is one of the ^{few} grounds on which such order can be challenged. The third respondent against whom the applicant has made allegation of mala fide, might not have thought it fit to come before the Tribunal and

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refuted, in view of the fact that the allegation is in such general terms and did not deserve a refutation by him, especially in view of the fact that he was not the author of the impugned order. Except a bald allegation that because he belonged to SC community, the third respondent was prejudiced against him, no other reason for the third respondent to develop prejudice against him, is given. Plea of mala fide cannot be sustained on the basis of such general and unsupported allegation.

6. The learned counsel for the applicant submitted that the very fact that after promotion of the applicant, the third respondent had assigned duties which had nothing to do with scientific work in spite of the applicant's protest, demonstrates the third respondent's prejudice. He submitted that the applicant had mentioned in his self-assessment in the ACRs about the work assigned to him and that would prove the above fact. We secured the ACRs to verify this allegation. It is seen that the applicant who was promoted as JSO on 10.4.1986 has in the ACRs for the period from January, 1986 to August, 1986, for the year 1987 and for the year 1988, has disclosed that he had been entrusted with work connected with his post and expressly stated that he was satisfied with the assignment of the job. It is only from 1989, he was assigned the task of EPABX Group as Group Officer to streamline the functioning of the communication of the Establishment and that he also performed jobs connected with that work. Though he has expressed dissatisfaction with the assignment of that task, the

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higher officer has noted that there is enough scope for the officer to improve his skill and show output in that section itself by improving communication techniques. He has also remarked that he would assign him more jobs in the feild of parachutes and textiles. In the subsequent year also, though the applicant has expressed his dissatisfaction with the work, the higher officer has remarked that he had worked with the applicant during that period and that he never observed him to be dissatisfied with the present assignments and that it appeared that the applicant was not having a clear idea as to what type of work he would like to do. Thus, it is seen that after his promotion for more than two and a half years, the applicant had been assigned job which was to the satisfaction of the applicant. The allegation that because the third respondent entertained prejudice against him on account of his community, he was given non-scientific work, is without basis. It would appear that after watching his performance for over two and a half years in some scientific work, and after finding that his work was not up to the mark, he appears to have been assigned a different job.

7. On the material on record, we are unable to conclude that the third respondent had any mala fides against the applicant.

8. The learned counsel for the applicant next contended that the review committee could not have taken into consideration the adverse entries, if any, in the ACRs for the period prior to the date of

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promotion of the applicant as JSO; that the applicant had not received any adverse remarks for the period subsequent to the date of his promotion; that at any rate, the applicant's performance in the jobs entrusted to him which were non-scientific jobs, could not have been made the basis for assessment of the applicant's performance; and that the decision to retire the applicant is, therefore, arbitrary. He cited some authorities in support of his contention that the adverse remarks made in the ACRs prior to the date of promotion cannot be looked into.

9. **Baldev Raj Chadha v. Union of India**, (1980) 4 SCC 321, has been cited in this connection. In that decision, it has been held that the burden is on the State to furnish materials before court to justify its action in public interest, and that reliance on old adverse entries for taking decision would not be proper.

In **Baidyanath Mahapatra v. State of Orissa**, (1989) 4 SCC 664, it has been held that when a government servant is promoted to a higher post on the basis of merit and selection, adverse entries, if any, contained in his service record lose their significance and that it would be unjust to curtail the service career of the government servant on the basis of those entries in the absence of any significant fall in his performance after his promotion.

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In **Baikuntha Nath Das & Anr. v. Chief District Medical Officer**, (1992) 2 SCC 299, it has been held that 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, though attaching more importance to record of and performance during the later years; that there may be a number of remarks, observations and comments which do not constitute the adverse remarks, but are yet relevant for the purpose of FR-56 (j) or a rule corresponding to it, and that 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. In this decision, it has also been held that judicial review of the order of retirement is open only on the grounds of mala fides, arbitrariness and perversity.

10. We have gone through the relevant records on the basis of which the review committee decided that the applicant should not be continued in service in public interest. It is no doubt true that the adverse remarks prior to the date of the applicant's promotion as JSO cannot be taken into consideration, as they would have lost much significance in view of his promotion. But, that does not mean ^{that} the nature of performance of the applicant even prior to the promotion should be totally ignored especially while considering his performance after the date of promotion. This is a case where the applicant is attributing mala fides to the Senior Scientist under

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whom he was working and he wants to contend that the assessment of his work by the Senior Scientist cannot be taken to be objective. Apart from the fact that the applicant has failed to make out any mala fides against the third respondent, we find from a perusal of the ACRs that the assessment made by the third respondent in the ACR after the applicant started working under him, is consistent with the view taken by others also. In the ACR of 1982, it is mentioned that the applicant had been advised from time to time to improve the standard of his technical knowledge. In 1983, it is mentioned that "the officer is average in his technical work." In 1984, his quality of work as well as his technical knowledge is stated to be "average" and he is described as an "average Assistant". In 1985, his performance is stated to be "just fair". These are all the remarks made prior to the date of his promotion. In the ACR for the period from January, 1986 to August, 1986, his performance is shown to be average and the following remarks are found :

"...The officer could not make any significant contribution during the period. He is not properly qualified or experienced to work in the Test Lab (Metal). He should be given such job where he may be able to contribute something."

The reviewing authority, agreeing with the assessment of the reporting officer has remarked, "Just an average JSO with very limited capability and capacity for any research work. He is capable of doing most routine job that too under guidance." This remark is

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not made by the third respondent but by the Executive Director. In the ACR for 1987, the reporting officer has remarked as hereunder :

"An average officer, who needs continuous guidance. There has not been any marked improvement in his work efficiency although he is being briefed regularly on his shortcomings.... He lacks initiative & technical judgement."

The reviewing officer has agreed with the assessment and has observed that he is "An officer of average calibre, must work hard to learn the job." For the year 1988, the reviewing officer has observed that he is "An officer with average capabilities." In the ACR of 1989, the reporting officer has remarked that "He is a person of average capabilities who tries to complete the assigned task." The reviewing authority who is other than respondent No.3, has remarked that he is a "JSO of average capabilities". He has been graded as "average". Similar remarks are found even in the ACR for 1990 and he has been graded as "average". In the ACR of 1991, it has been remarked that he is a "person of average calibre". The Joint Secretary, Ministry of Education, who was a member of the review committee, has, after, considering the material on record, observed that the applicant "does not deserve to be retained in service beyond 50/55 years of age as the case may be." Dr. A. P. J. Abdul Kalam, Scientific Adviser to Raksha Mantri, has considered the entire material on record and prepared a note assessing the performance of the applicant and has noted as hereunder :

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"4. I consider that except Shri Jai Singh, JSO, all others are fit for retention in service beyond the age of 50/55 years as the case may be. Shri Jai Singh, JSO is considered to have lost utility to the service and deserves to be retired permanently from service on attaining the age of 50 years in public interest."

11. When the applicant made a representation, the matter was placed before the representation committee comprising the Education Secretary and Joint Secretary, Department of Power, who, after careful consideration of that representation, was of the view that the applicant's representation had no basis and they recommended its rejection. Thereafter, the file was sent up to the Prime Minister who was acting as Raksha Mantri, who approved the recommendation and the representation of the applicant was accordingly rejected.

12. This Tribunal cannot sit in judgment over the assessment made by the competent authorities or make a fresh assessment. It is seen that the review committee has applied its mind to the material on record and has found that it was not in public interest to continue the applicant in service. This assessment of the review committee is based on material on record. In fact, after his promotion, the applicant has been given a warning by letter dated 25.11.1987 stating that even after repeated advise, there had been no positive improvement in his work and that in the interest of the organisation he must pay attention to improve upon his professional competence and efficiency. We do not think that the decision

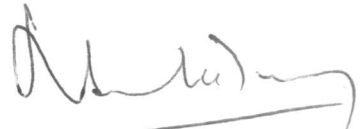
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arrived at by the review committee consisting of eminent persons in the feild which is based on the record of performance of the applicant, can be characterised as arbitrary or perverse. We cannot, therefore, interfere with the impugned orders.

13. For the above reasons, this application fails and the same is dismissed. No costs.



(K. Muthukumar)
Member (A)



(S. Venkataraman)
Vice Chairman

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