

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 16th day of September, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 475 of 1997

S.K. Awasthi, son of Late Sri Vasudeo Awasthi, resident of
116 L.I.G., Hemant Vihar, Near Sabzi Mandi, Barra-2,
Kanpur.....

.....Applicant.

Counsel for applicant : Sri R. Sinha.

Versus

1. Union of India through Secretary, Department of Statistics
Ministry of Planning, Govt. of India, S.P. Bhawan, Sansad
Marg, New Delhi.
2. Director, National Sample Survey Organization (Field)
Operation Division, Third Floor, Pushpa Bhawan, Madan
Giri Road, New Delhi.
3. Dy. Director, National Sample Survey Organisation (FOD),
Gujrat Region (West), M.J. Vidyalaya Premises, Near
Paldi, Bus Station, Paldi, Ahmedabad.
4. Dy. Director, N.S.S.O. (FOD), U.P. Central Region, B-991,
Sector-A, Mahanagar, Lucknow.

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.....Respondents.

Counsel for respondents : Sri S. Mandhyan.

ORDER

BY HON. MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of A.T. Act,
1985, the applicant has prayed for the following reliefs :-

- "a) This Hon'ble Tribunal may set aside the order
dated 8.2.1995 (Annexure A-1) and 2.2.1996
(Annexure A-2) to this Original Application.
- b) This Hon'ble Tribunal may kindly quash the
order dated 4.1.1996 (Annexure A-3), 8.3.1996
(Annexure A-4), 10.5.1996 (Annexure A-5) to
this original application.
- c) This Hon'ble Tribunal may kindly direct the
Respondent No.2 to permit the petitioner to
continue on his post of Superintendent till
he attains the age of normal retirement of
58 years.

[Signature]

- d) This Hon'ble Tribunal may kindly further direct the respondents to make payment of salary of the petitioner from 1.2.1994 to 15.8.1994 along with 18% interest.
- e) This Hon'ble Tribunal may kindly direct the respondents to grant all the benefits and privileges of continuity of service on the post of Superintendent as if no such order has ever been passed dated 4.1.1996/10.5.1996 (Annexure Nos.A-3 and A-5)."

2. The facts of the case in a nutshell are that the applicant, at the relevant time, was working as Superintendent at Jam Nagar in Field Operation Division in National Sample Survey Organisation in the department of Statistics, Ministry of Planning, Govt. of India.

3. From the relief clause it may be noticed that he has sought quashing of order dated 8.2.1995 (Annexure A-1) and order dated 2.2.1996 (Annexure A-2) which relate to payment of salary and allowances for the period from 1.2.94 to 15.8.95. He has also prayed for quashing of order dated 4.1.96 and other orders dated 8.3.96 and 10.5.1996 which are regarding his compulsory retirement under Fundamental Rule 56(J). It may be observed from this that he is seeking multiple reliefs in a single O.A. which is not permissible, Under Rule 10 of CAT Procedure Rule. Moreover, during the course of hearing, the prayer relating to payment of salary and allowances for the period which was treated as unauthorised absence has not been pressed. Hence we will be dealing with his relief mentioned in Clause B of the relief clause regarding his compulsory retirement.

4. Before we proceed to adjudicate the issue relating to his pre-mature retirement, it may be profitable to quote the Fundamental Rule 56(J), which is as under :-

"Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Govt.

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servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice;

- (i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;
- (ii) in any other case after he has attained the age of fifty-five years;

Provided that nothing in this clause shall apply to a Government servant referred to in Clause (e), who entered Government service on or before the 23rd July, 1966."

5. The applicant has assailed the orders of compulsory retirement (Annexure A-3), rejection of his representation against the pre-mature retirement (Annexure A-4) and the corrigendum in the said order (Annexure A-5) on the various grounds which are given below :-

- A- It has been submitted that the perusal of the order dated 4.1.96 would indicate that the respondents have exercised the power under F.R.56(J) or Rule 48 of CCS(Pension) Rules, 1972 which they are not entitled to do. That shows that they are not definite under which rule they are exercising power. It appears, to avoid this ambiguity, they issued corrigendum dated 10.5.96 (Annexure A-5) and deleted Rule 48 of the CCS (Pension) Rules, 1972 from the order of 4.1.96.
- B- It has been contended that the applicant completed 30 years of qualifying service on 6.5.92 and 50 years of age on 3.2.93 continuous beyond these dates meant that he was fit and could have continued in Govt. till the date of his normal retirement.
- C- It has been pleaded that the representation of the applicant against the compulsory retirement was rejected vide order dated 8.3.96 and the rejection order ^{it does not contain} ~~cannot give~~ any reasons and is arbitrary.
- D- It has also been submitted that during the relevant

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period there was no adverse material against him nor he has been communicated any adverse entry in his C.R. and the order under Rule 56(J) is arbitrary and without substance.

E- He has very strongly pleaded that as per the instructions issued from time to time, the screening of every Government employee is to be held before attaining 50 years of age and since he has already attained the age of 52 years 11 months, exercise of power under Rule 56(J) suffers from procedural illegality. It has also been asserted that there has been a gap of almost two years between the decision of the Screening Committee and the decision of the Review Committee. This gap vitiates the action under Rule 56(J) as there has been no adherence to time schedule between screening and review.

6. The respondents, on the other hand, have opposed the contentions of the applicant and they have submitted that the applicant, at the relevant time, was handling the job of Superintendent which requires managerial skill in ensuring that the time bound survey programmes are completed as per pre-determined schedule. It was observed that the applicant was not able to manage the Sub-Regional Office properly. His case was processed along with other similar cases under F.R.56(J) as per the guide-lines in this connection. Under this rule, appropriate authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute power to retire any group 'B' servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice. In this case also, the normal procedure was adopted which is clear from the order dated 4.1.96. The Screening Committee gave its report on 8.6.93 and have observed as follows :-

"In the 4th and 5th year, his performance has been rated as average and the last CR (91-92)

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he has been rated as below average and adverse remarks communicate to him has been retained. The contents of the adverse remarks relate to none achievement or norms in the field inspection in this scheme. This is a lapse which can always be got corrected by some rigorous checks and controls on the official's work by the Senior Officer. This being the case, there does not seem to be enough and sufficient grounds for not retention of/and trying him in the lower cadre. As such he is found fit for retention in service in the same cadre."

However the Review Committee headed by Secretary, Department of Statistics on 21.11.1995 have observed as under:

"The Committee decided that the case of Sri Awasthi should be considered in totality on the basis of his records of service including the latest confidential Reports for the year 1995. It was noted that the performance of Sri Awasthi had been continuously on the decline since 1989 with reports being 'Average' and 'Below Average' except for the year 1993 when he was graded as 'Average' by the Reporting Officer and very good by the Reviewing Officer and in the subsequent 2 years, he was again graded as 'Average'. It was also noted that adverse remarks in his C.R. for the year 1992 were communicated to Sri Awasthi but were not expunged after due consideration by the appropriate authority."

The Committee evaluated Sri Awasthi as 'Average' and 'Not fit' for further retention in service in the public interest in terms of the provisions of F.R. 56 (J) (Annexure A-3 to the application)."

7. They have submitted that the contention of the applicant that no action can be taken against the employee after the age of 56 years cannot be accepted as per F.R. 56(J), the appropriate authority is empowered to compulsory retire a group 'B' Officer after he attains the age of 50 years. Since the rule position is a wider scope, the person who has attained the age of 50 years can be retired from service and the interpretation of the petitioner that under F.R. 56(J) only persons of 50 years of age can be retired from service is not correct.

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8. We have heard counsel for the parties at length and perused the records. We have also gone through the original records produced by the respondents in this connection.

9. From the discussions made above, only few issues survive which we would like to discuss separately. The first point, which was strongly pleaded during the course of the argument, was that many procedural irregularities has crept in like non-adherence of time schedule for review and non-application of mind by the Acting Committee both as Internal Screening and Review Committee and rejection of representation by a non-speaking order. In this connection, it may be stated that ordinarily the procedures and guide-lines are regarded as merely directory and not mandatory and since the action can be taken at any time after attaining the age of 50 years, there is nothing in the context to justify the submission that the provisions regarding initiating action six month before the date of 50 years was mandatory. Our this view is fortified by the judgment of the C.A.T. Bombay Bench in the case of N.S. Bankar Vs. Union of India & others reported in 1993(3) SLJ (CAT) 35. In that case the Bench was considering the case of compulsory retirement under Article 459 of Central Civil Services Regulation which is identical with Rule 56(J).

10. The next important question which arises for consideration is whether the Review Committee can take into consideration the reports which have not been communicated. This question has been finally settled in case of Union of India Vs. M.E. Reddy (1990) 2 SCC 15 and it has been held that it is permissible for the Government to take into consideration un-communicated adverse remarks also while taking a decision to retire a Government servant compulsorily.

11. The applicant has relied on the following cases to urge that the action of the respondents is arbitrary and illegal :-

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i) Bhup Narain Tiwari V. U-ptron India Ltd. Lucknow

2001 ESC 1427

ii) State of Gujarat V. Umedbhai M. Patel

JT 2001 (%) SC 223

The case of Bhup Narain Tiwari and Umedbhai Patel relied on by the applicant are distinguishable on facts. In the present case there is the applicant has no case of promotion, awards and appreciation letter during the relevant period. In this case, the applicant was promoted in the year 1988 and the service record of the applicant had been taken into account after the year 1989. Thus, his reliance on these cases are misconceived.

12. The Supreme Court has laid down certain principles after reviewing a catena of judgments in the case of Baikunth Nath Das and Another Vs. Chief District Medical Officer Baripada and Another 1993 SCC (L&S) 521. Para 34 of the aforesaid case 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) mala fide 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

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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.

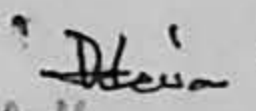
- v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

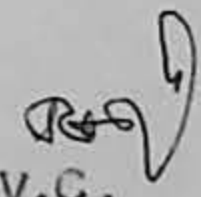
Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above."

13. In view of the legal position stated above, we do not find any justification to interfere in the order of compulsory retirement dated 4.1.96. We have very carefully perused the original record which do not leave us in a doubt that every care has been taken to process the case of the applicant very meticulously and rejection of his representation against the pre-mature retirement has been passed after due deliberation of the points raised by the applicant. In view of this the O.A. is liable to be dismissed.

14. In the result, the O.A. is devoid of any merit and is accordingly dismissed.

No order as to costs.


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