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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION T.A . NO. 1573 OF 1986

Abad Husain

.....

Applicant

Versus

The Union of India & others.....Respondents.

Hon. Ajay Johri -AM

Hon. G.S.Sharma -JM

(Delivered by Hon, Ajay Johri -AM)

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In this suit received on transfer from the Court of Civil Judge, Bareilly, the plaintiff has alleged that he was appointed on the erstwhile O.T. Railway by the Agent General Manager as a Tally Clerk. On 1.12.57, he was suspended. He was issued a charge sheet on 3.5.58 and removed from service on 9.11.61. He was reinstated by a court order with full benefit. In August, 1972, he was again given a charge sheet on the some charges as in May, 1958 but the enquiry officer returned the case file because certain documents demanded by the plaintiff were not available, so the enquiry could not be completed. In July, 1976, he opted for pension as the date for option had been extended upto 31.12.76, it was open for retired employees too. He alleges that he had not completed 50 years of age when he was retired from service under rule 2046(k) of the Indian

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Railway Establishment Code Vol.II on 14.8.76. He appealed against this order. His appeal was rejected on 21.11.77 by the General Manager without application of mind. According to him his retirement order is against rule because he has not been retired in public interest but on account of the charge sheet issued to him, he was neither given any show cause notice and nor ^{or any} ~~given~~ opportunity to defend himself thus violating Article-311(2) of the Constitution. He has claimed that he is entitled to pension. His representation to the Chairman Railway Board was also turned down on 25.2.83. He has, therefore prayed for the relief that he is entitled to serve upto 31.1.84 with all consequential benefits. He has claimed Rs. 32400/- as back wages for the period from the date of his retirement to 31.1.84 the actual date of his superannuation.

2. The defendants have said in their reply that the plaintiffs personal file was destroyed ^{at y} in a fire. He has to be taken as appointed by a senior scale officer in terms of existing rules. He was retired on completion of 30 years of service and due notice has been given to him. The plaintiff had not opted for pension. According to the defendants, he stood retired ² under Provident Fund Rules. He accepted the payment on 4.3.83. They have

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disputed the claim of ³⁴Rs. 32,400/- and said that the suit is barred ^{by} time.

3. We have heard the learned counsel for both sides. On behalf of the plaintiff, it was submitted that the order of compulsory retirement was given by an incompetent authority as the plaintiff was appointed by the Agent who was equivalent to the General Manager and the order is malafide because when enquiry could not be processed the defendants took recourse to retiring him under Rule 2046(k). The order is also a non speaking order. The contentions raised on behalf of the defendants were that the suit is barred by time. It was a matter of 1976 and has been agitated in 1984. Successive representations do not save limitation and compulsory retirement under Rule 2046(k) is not punitive in nature. The retirement was done in public interest. Nothing else was pressed before us.

4. By a letter dated 28.9.76 the Divisional Superintendent, Izatnagar forwarded an appeal preferred by the plaintiff to the General Manager(P) Gorakhpur on receipt of the notice dated 14.5.76 in respect of his compulsory retirement under rule 2046(k). The plaintiff had said in his appeal that he has been denied further promotion though he had worked conscientiously throughout his service. ³⁴He had worked

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~~conscientiously~~ ² ² ² ² throughout his service. He had worked during the general strike in 1974 at considerable risk to himself but he has been given no benefit on that account. He was not posted to any such station where he could prove his merit. He has no other means of livelihood. He has been superseded by a number of his juniors. He has not completed 50 years of age, so according to rules he cannot be retired before attainment of that age. This appeal was rejected by the General Manager on 12.1.77. According to the notice given to the plaintiff, he having completed 30 years of service on 31.12.74 was ordered to be retired w.e.f. 14.8.76(FN) or from the date of expiry of 3 months' notice.

5. The learned counsel for the appellant ^{plaintiff} has relied on a number of rulings to support his case that compulsory retirement of the petitioner has not been made in public interest and was more in the nature of implementing the intention for which the charge sheet was issued to him which was not completed due to certain discrepancies. In Smt. S.R. Venkatraman-vs. Union of India & others (1976 Supreme Court Cases(L&S) page-216), the appellant a Central Government employee was retired

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prematurely from service under rule-56(j)(i) on her attaining the age of 50 years in public interest. The High Court had dismissed her writ petition in limini and on appeal before the Hon'ble Supreme Court, she made an allegation of malice against one of her superior under whom, she served for a very short period and got an adverse report. She also contended that the government did not apply its mind to her service record and for the facts and circumstances of the case, the power of retirement was not exercised for the furtherance of public interest and was based on extraneous considerations. Allowing the appeal, the Hon'ble Supreme Court had observed that there was nothing on the record to show that the appellant's superior was able to influence the Central Government for making the order of pre-mature retirement. It was, therefore, not the case of the appellant that there was actual malicious intention on the part of the Central Government in passing the order of retirement. The Hon'ble Supreme Court further observed that it was not necessary to examine the question of malice or whether the discretionary power has been exercised for an unauthorised purpose and it was also immaterial whether its repository was acting in good faith or in bad faith. The Hon'ble

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Supreme Court held that it will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance. The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. The Hon'ble Supreme Court went on to observe that it would be gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by using a rule meant to be exercised in the 'Public interest'. So an administrative order based on reasons of fact that do not exist must be held to be infected with an abuse of power and must be set aside.

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6. In the plaintiff's case, there is no indication in the averments made by the defendants that would reflect adversely on the performance of the plaintiff. In the written statement submitted by the defendants, the only mention that has been made is that the plaintiff was compulsorily retired on completion of 30 years of service after three months' notice as his retention in the service was not considered to be in public interest. What was the public interest has not been elaborated-?. A public interest envisages retention of honest and

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efficient employee in service dispensing with the services of those who are inefficient, dead wood, corrupt and dishonest. Therefore, if any retirement is made in public interest, rule will contemplate retirement of inefficient corrupt and dead wood which would serve the public interest. So, being the position, and the fact that the defendants have not thrown light on any of the aspects connected with inefficiency, dishonesty or unsuitability of the plaintiff for further retention, merely a bald statement that he was retired in public interest without supporting any documentary evidence, does vitiate the process of natural justice. In the words of his Lordship Mr. Krishna Iyer-J, "When an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the court may be satisfied that the order is not bad for want of any material whatever, which, to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of 'Public interest' justifying forced retirement of the public servant." We find nothing that has been placed before us to sustain this plea on the part of defendants. [✓] We regret to say that [✓] the defendants have failed to exercise the carelessness [✓] in making their arguments. But on the other hand in

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his appeal against the premature retirement notice submitted by the plaintiff on 2.6.1976 there is admission that the plaintiff was not promoted for a long time. He has admitted that he was not able to show his work because he was not posted to any such station where he could do so and a number of his juniors have superceded him. So his performance during the 30 years of service must have not been upto the mark. The court is confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest. The circumstances of the present case fail to support the plea that when the defendants could not implement their intentions in the disciplinary proceedings against the applicant, they adopted a short cut of retiring him under rule 2046(k) of the Indian Railway Establishment Code Vol.II. The admissions made by the plaintiff himself in his appeal go against this plea³ by making³ them he has provided material to support the defendants case. 31

7. In another relied³ on case (1981-SCC(L&S)-I) Baldeo Raj Chaddha-vs- Union of India., the Hon'ble Supreme Court held that the whole purpose of rule of compulsory retirement is to weed out wothless³ without the punitive extremes covered by Article-311

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of the Constitution. But under the guise of 'Public interest' if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. They have further held that any action which irrationally digs up obsolete circumstances and obsessively reaches a decision based thereon, cannot be sustained. According to them legality depends on regard of the totality of material facts viewed in a holistic perspective. This ratio does not help the plaintiff as he himself has made an admission regarding his non-promotion and supercession thereby reflecting on his performance. ³¹ If this was his performance he could not claim that his classification amongst deadwood was wrong. ³¹

8. In the ³¹ cases on the subject of authority competent to retire a person, it was held that ordinarily the appointing authority is also the dismissing authority, but the position may be different where the compulsory retirement is alone ordered. Since such retirement is a category which is different from the punishment covered under Article-311 of the Constitution of India. In case of compulsory retirement under Rule 2046(k) which is

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analogous to F.R. 56(j), the specific provision says that he who is empowered to make substantive appointment of an officer is also the appropriate authority to retire him compulsorily on the date and there will be no violation of Article-311(1). In the plaintiff's case, the plea taken by the learned counsel for the applicant is that since his service record was not available, the General Manager should be considered to be the appointing authority and since the order has been issued by the Senior Scale Officer, it would be bad in law. In ratio of the observations made by the Hon'ble Supreme Court, this contention fails. A Senior Scale Officer, who has been clothed with the power of appointment, which was originally with the General Manager could make the order of compulsory retirement and the order would not be bad on that account.

9. Another contention that was raised was that the appellate authority passed an unreasoned and non speaking order without hearing the applicant. The learned counsel relied on Ram Chandra's case in this respect. The compulsory retirement of the plaintiff was made under rule 2046^(K)(R-II). Under this rule, the compulsory retirement is not punitive. The representation submitted by the retired official has been considered by the competent authority. Normally

such representation are put up to the review committee who puts up its recommendations to the competent authority. It will not be necessary for the competent authority to give a detailed speaking order while accepting or rejecting the recommendations of the review committee. This argument has, therefore, no force. The appellate order only shows that the General Manager had carefully gone through the cases of four employees and agrees that the decision given is correct.

21/ 10. The contention raised by the learned counsel for the applicant that he was not given any show cause notice nor given any opportunity to defend himself, thus his case was prejudiced, is not supported by facts. He was given notice for premature retirement and he has put up representation against the same. This is in line with the process through which the compulsory retirement^{by Annex Rule 2046(*) RTI} of an individual is processed and concluded.

11. Another contention that was raised was in regard to plaintiff's option for pension. The defendants have denied that he had opted for pension. They have stated that he has accepted the payment made under Provident Fund Rules^{by}. The plaintiff had also not filed any document to show that he had really opted or submitted any option in time. We,

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do not, therefore, consider it fit to interfere in regard to this request at this stage.

12. In conclusion, we do not find this case to be a fit case for interference. The petition is, therefore, rejected. The suit is dismissed. We make no order as to costs.

अजय जैसवाल
Member (A)

Member (3)
Vice-Chairman

Dt/May 12th, 1988/
Shahid.