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OPEN COURT.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD.

Dated : 20th September, 1995.

Registration No. 184 of 1987.

CORAM : Hon'ble Mr. S. Das Gupta, Member (A)  
Hon'ble Mr. T. L. Verma, Member (J)

Awadh Narain Tiwari  
s/o. Moti Lal Tiwari,  
R/o. 369, U. Block, Nirala Nagar,  
Kanpur..... .... Applicant.

Versus

Director General, Employees State  
Insurance Corporation,  
E.S.I.C. Building, Kotala Road,  
New Delhi. .... Respondent.

O R D E R (Oral)

(By Hon. Mr. S. Das Gupta, Member-A)

This O. A. was filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the relief of quashing of the impugned order dated 1.4.1986 by which the applicant was compulsorily retired.

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2. The applicant was initially employed as Peon. By successive promotion he reached the level of Insurance Inspector to which post he was promoted on 1.5.1980. He was on probation of two years which was extended from time to time, and finally by the impugned order dated 1.4.1986, he was compulsorily retired from service in exercise of power conferred on the respondents under Rule 56-J of the Fundamental Rules. The applicant did not file any representation against this order but, directly approached this Tribunal through this Original Application.

3. When the case was listed for admission, a preliminary objection was raised by the respondents on the maintainability of the application on the ground that no representation was filed by the applicant in terms of the Office Memorandum dated 5.1.1973 of Government of India, Ministry of Home Affairs (Department of Personnel & A.R.). This preliminary objection was taken into consideration by the Bench of this Tribunal but in view of the fact that the applicant was due to superannuate on attaining the age of 58 years on 30th November, 1988, the respondents were directed to produce the records of the proceedings of the Review Committee and also the charge-sheet filed against the applicant.

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4. The respondents have filed a counter-affidavit in which it has been stated that the applicant was involved in a criminal case and was also charge-sheeted. Therefore, in terms of the guide-lines contained in the Department of Personnel & A.R. Office Memo dated 5.1.1973, the applicant was compulsorily retired having already attained the age of 55 years on the ground that his integrity was doubtful. The applicant has filed rejoinder-affidavit, in which apart from reiterating the contention made in the Original Application, it has been stated that the impugned order was issued in colourable exercise of powers conferred under Rule 56-J of the Fundamental Rules and it was by way of punishment.

5. We have heard the learned counsel for both the parties and perused the record carefully. The learned counsel for the applicant made available to us the copy of the order dated 12th April, 1994 passed by the High Court of Judicature at Allahabad by which the charge-sheet against the applicant has been quashed with the observation that there is no evidence of **conspiracy** or evidence on which even an inference may be drawn that the petitioner was guilty of criminal conspiracy. The proceedings against the petitioner, held to be clear abuse of process of the Court.

6. In reply to a specific question put by us to the learned counsel for the respondent, we have been told that the Review committee which recommended compulsory retirement of the applicant went only on the basis of the charge-sheet against the applicant to hold that his integrity was doubtful. The proceedings of the Review Committee have not been made available to us. However, the specific reply, given by the learned counsel for the respondents, read with contention made in the counter-affidavit makes it amply clear that the only basis for holding that the integrity of the applicant is doubtful, was the charge-sheet against him in a criminal case which has since been quashed by the High Court of Judicature at Allahabad.

7. The A.C.R. Dosier of the applicant was made available to us and we have gone through the A.C.Rs. pertaining to the years after his promotion to the grade of Inspector of Insurance. It is very clear from the ACRs that there is no adverse remark with regard to the integrity of the applicant or with regard to any other personality traits. In fact in the ACR of the year in which the applicant was actually retired from service, there is no adverse remark in the integrity column.

8. As the charge-sheet has been quashed by the High Court of Judicature at Allahabad, the same is honest. Therefore, the inference of doubtful integrity which was the basis of compulsory retirement is knocked out. In that view of the matter, the impugned order retiring the applicant

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compulsorily has no basis whatever, and can not therefore, be sustained.

9. In view of the foregoing, the impugned order dated 1.4.1986 compulsorily retiring the applicant is quashed. Since the applicant had already attained the age of superannuation on 30th November, 1988, we direct the respondents to pay the salary and allowances payable to the applicant which would have been payable to him had he not been compulsorily retired from service, after adjusting the pension which has been paid to him during this period. His pay on the date of his retirement, i.e. on 30th November, 1988 shall be refixed and the pensionary benefits shall be recalculated on the basis of the such refixation of pay and arrears of terminal benefit paid, accordingly. Let this direction be complied with within the period of three months from the date of communication of this order. The application is disposed of with this direction. The parties to bear their own costs.

J.M.

A.M.

VKP/-