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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration No.395 of 1987.

Prem Narain Shankdhar

Applicant.

Vs.

Union of India and another

Respondents.

Hon'ble D.S.Misra,A.M.
Hon'ble G.S.Sharma,J M.

(Delivered by Hon'ble D.S.Misra)

This is an application under section 19 of the Administrative Tribunals Act XIII of 1985 challenging the order dated 1st April,1987 passed by the Chief Commissioner(Admn) U.P. and Commissioner of Income Tax Lucknow retiring the petitioner from service under clause(b) of sub-rule (1) of Rule 48 of the Central Civil Services(pension) Rules,1972.

2.The applicant's case is that he joined the Income Tax Department as Steno Typist on 11.10.1955 and was promoted as Upper Division Assistant on 7.9.63 ,then Tax Assistant on 31.5.78 and as Income Tax Inspector on 3.10.1980; that he had completed 30 years of qualifying service in Income Tax Department on 30.9.85 and his date of birth according to the High School Certificate is 5.2.33; The applicant was allowed to continue beyond 30 years of qualifying service after 30.9.85 and he was also allowed to cross the efficiency bar on 1.10.1984 by order dated 10.2.1986(annexure 1); that the petitioner was served with an order dated 1.4.87 passed by Chief Commissioner Administration, U.P.(respondent) purporting to retire the applicant under ~~sub~~ clause(b) of sub-rule (1) of Rule 48 of the CCS(Pension) Rules,72(copy annexure 2); that the impugned order is not in compliance with the guidelines prescribed by the Government of India, Ministry of Home Affairs OM dated 5th Jan.78 regarding review of cases of employees who have completed 30 years of qualifying service for arriving at the conclusion as to whether any such employee should be retired from service in public interest or whether he should be retained in service (copy annexure 3). The applicant has sought an order or direction to be issued quashing the order dated 1.4.87 and directing the respondents not to give effect to the aforesaid order and not

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to interfere in any manner with the applicant's having been as Inspector Income Tax (Salary Circle) Central Revenue Building Ashok Marg Lucknow.

3. In the reply filed on behalf of respondents, it is stated that as per personal file maintained in the office of the answering respondent, the date of birth of the applicant is 5.2.33 and the applicant completed 30 years of qualifying service on 30th September, 85; that no meeting of the Review Committee as alleged in para 6(v) of the claim petition was held in the quarter of October, 85 to December, 85 and the Screening Committee met on 4th March and 11th March, 1987 and found the applicant not fit to be retained in service beyond 30 years of qualifying service; that adverse remarks were awarded and communicated to the applicant in the years 56-57, 57-58, 58-59 and 66-67 and he was also administered an warning on 29th September, 67 (copy C.A. 1); that during the last five years, the applicant was awarded mostly average and good remarks by the reporting and countersigning authority; that the allegations made in para 6(xi) of the claim petition are not correct and the full context of OM dated 5.1.78 reproduced by the applicant as annexure 3 of the claim petition, is not a complete context and the whole context of the office memo dated 5.1.78 is available as annexure CA II; that the Chief Commissioner Administration, U.P. and Commissioner Income Tax Lucknow had passed the impugned order dated 1.4.87 after due deliberations taking into account the recommendation of the Screening Committee which met at Lucknow on 3/4th March, 87 and the Review Committee which met on 11th March, 87; that the minutes of the screening committee and the Review Committee could be produced if desired by the tribunal; that the applicant has been retired compulsarily in public interest under Rule 48(i)(b) of the CCS(pension)Rules, 72 and Fundamental Rule 56(j) and there is no violation of Arts. 14 and 16 of the Constitution of India; that the guidelines prescribed by the Government of India have been fully observed and complied with in arriving at the conclusion to compulsarily retire the applicant and is in accordance with office memo dated 7th March, 1986; that the applicant was not approved for promotion by the Departmental Promotion Committee in 1978, 1977, and 1979 to the post of Head Clerk whereas approved persons junior to the applicant were promoted to the post of Head Clerk

from 17th July,79; that the applicant was also not approved due to lower grading by the DPC for promotion to the Inspector out of seniority quota in 1979 ;that the applicant also could not pass the departmental examination of Income Tax Officer inspite of number of chances availed by him; that even after his promotion as Inspector of Income Tax in September,1080 out of year of posting quota ,he did not improve and got only average and good reports in C.R. from his reporting and counter-signing authorities; that the applicant has not availed of the departmental remedy of ~~.....~~ representation to the higher authorities as provided in the instructions of the Government of India reproduced on page 284 of SWAMY'S PENSION COMPILATION 10TH EDITION.

4.On the date of final hearing of the case,neither the applicant nor his counsel appeared before us. Sri K.C.Sinha learned counsel for the respondents produced service record of the applicant and Screening Committee Report in a sealed cover and also argued the case on behalf of the respondents. We have carefully considered the documents on records. The main contention of the applicant in the claim petition is that a decision to retain him in service had been taken on his completing 30 years of qualifying service on 30.9.85 *and h* Exercise of power by the respondent under Rule 48 (1) (b) of CCS (Pension) Rules,1972

was arbitrary and violative of Articles 14 and 16 of the Constitution of India .This contention of the applicant has been denied by the respondents who have categorically stated that the applicant was compulsarily retired on the recommendation of the Screening Committee and the Review Committee which met in March,87 for this purpose. Rule 48 of the CCS(pension) Rules provides that a government servant may be retired after he has completed 30 years of qualifying service by the appointing authority in public interest. Provision of Fundamental Rule 56 (j)also provides the appropriate authority absolute right to retire a government servant after he has attained the age of 55 years provided that he had entered service on or before 23rd July,58. Instructions contained in the Ministry of Home Affairs ~~have~~ Office Memo dated 5.1.78 lay down the procedure to be followed before a government employee is retired compulsorily. The above mentioned provisions have been made by the Government with a view to improving efficiency and strengthening administrative

machinery at all levels and the instructions contained in the OM dated 5.1.78 have been issued with the objective that these powers are exercised fairly and impartially and not arbitrarily. These instructions provide for formation of committees which will consider the cases of employees who will be completing or who have completed 30 years of qualifying service. In the instant case, the case of the applicant was considered by Screening Committee and also by review committee in the month of March, 1987. The allegation of the applicant that any such review was done in September, 85 has been denied by the respondents.

5. We have considered the contentions of the parties and we have also perused the record containing the proceedings of the Screening Committee meeting held on 4.3.1987 in which the Screening Committee had recommended the retirement of the applicant in public interest under rule 48 of the Pension Rules. This recommendation of the screening committee was accepted by the review committee meeting held on 11.3.87. On going through the recommendations of the committee, it is noticed that the applicant was promoted as Inspector Income Tax on 29.9.81. The Screening Committee has observed that after promotion as Inspector also the official has received only indifferent entries in the C.R. and has been rated as 'Good' in all five years upto the year 1985-86. The committee has further observed as follows:

"While the committee is not taking into account the past CRs of the official where adverse entry had been received by him as they relate to period prior to his promotion to the present post, the same

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do throw some light to the official's general attitude towards his work even since the year of his joining the service. The official has been consistently found to be an unwilling worker, has shirked responsibility entrusted to him.

Adverse entries earned by him have also been largely confirmed in the past. Even after promotion, the official has not shown any visible signs of improvement and in all the 5 years that are being considered for review, he has earned only a 'Good'. Obviously, the official concerned has not been contributing towards his work entrusted to him. It was also brought to the notice of the committee that no officer is willing to accept Sri Shankhdhar on his staff as apart from increasing the strength of staff available to the officer concerned, Sri Shankhdhar is known to contribute very little towards work in the office. Given this position, the committee is of the view that official concerned has ceased to be effective and is positively inefficient. In fact, ever since his joining service, he has been inefficient and incompetent and disinterested in his work. The committee accordingly is of the view that the official should be retired in public interest under Rule 48."

The remarks of the review committee are as follows:-

"On going through the material against the official and the recommendations of the Screening Committee, this Committee is of the opinion that the official has lost any usefulness in the Deptt. to be retained any longer. He is incompetent and inefficient, besides that he is not at all interested in his work. The committee, therefore, agrees with the recommendations of the Screening Committee and decides to retire him under rule 48 of CCS(Pension) Rules."

From the above we find that both the Screening Committee and the review committee have ignored the good reports earned by the applicant during the last five years and have made the recommendation on the basis of the record of the applicant prior to his promotion as Inspector Income Tax. In the case of BRIJ MOHAN SINGH CHOPRA

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VERSUS STATE OF PUNJAB ATC(part 3 and 4)1987,

page 496, Hon'ble the Supreme Court have observed

as follows:

"Though the entire service record of an employee may be considered while considering the question of his premature retirement, but if the service record of the last 10 years of his service do not indicate any deficiency in his work and conduct it would be unjust and unreasonable to retire him prematurely on the basis of entries which may have been awarded to him prior to that period. In Baldev Raj Chadha Vs. Union of India, this court held that if an officer had earned no adverse entries at least for five years immediately before the compulsory retirement, he can not be cashiered on the score that long years ago his performance had been poor. It appears that the State of Punjab realised that premature retirement of an employee on the basis of entire service record which may include stale entry, would be unreasonable and it therefore, issued government order on June 22, 1981 directing that under the Punjab Civil Services (Premature Retirement) Rules, 1975 it would not be desirable to scrutinize the entire service record of an employee and premature retirement should not be ordered if during the last 5 years the work and conduct of the employee have been good. This direction was no doubt issued after the appellant was prematurely retired in March, 1980 but nonetheless it is apparent that the government had changed its policy in accordance with the decisions of this court and it had taken a decision not to retire a government servant if his service record for the last five years did not contain any adverse remarks. The appellant had not earned any adverse remark during the last five years of service, on the other hand he had earned 'good' and 'very good' entries during those years. In this view the government's decision to retire the appellant prematurely in exercise of the power under Rule 3 is not sustainable in law."

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In our opinion the ratio of the above case is fully applicable to the instant case. The respondents have themselves admitted that the applicant had earned 'good' entries in the last five years. It is also on the record that the applicant was allowed to cross the efficiency bar w.e.f. 1.3.85 by an order dated 10.2.86, on the basis of recommendation of another committee appointed for this purpose. We are of the opinion that the decision of respondent no.2 to retire the applicant prematurely is not sustainable in law. Accordingly we set aside the order dated 1.4.87 retiring the applicant from service under Rule 48 of the CCS(Pension) Rules 1972 and direct that he shall be treated as being in service without break. He is also entitled to his salary, allowances and such other benefits as may be admissible to him in the rules.

For the reasons mentioned above, the petition is disposed of accordingly. Parties shall bear their own costs.

A.M.
A.M.
15.9.87

J.M.
J.M.
15.9.87

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