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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Registration O.A.No. 508/1987

Harish Chandra Joshi Applicant

Versus

Union of India through Chief
Commissioner (Admn.) U.P. and
Commissioner of Income-tax Lucknow
and others Respondents

Hon'ble Mr.D.K.Agrawal, J.M.
Hon'ble Mr.K.Cbayya, A.M.

(By Hon'ble Mr.D.K.Agrawal, J.M.)

This application under section 19 of
Administrative Tribunals Act 1985, is directed
against the order of compulsory retirement
dated 6.4.1987 contained in annexure no. 1 to the
claim petition, purported to have been passed
under Clause (D) of Sub Rule 1 of Rule 48 of the
Central Civil Services (Pension) Rule, 1972, by
Commissioner of Income-tax (Central) Kanpur.

2. The applicant was recruited as Lower
Division Clerk in the Income-tax Department in the
year 1957 and in due course promoted as Inspector
of Income-tax. The contention of the applicant is
that he was not communicated any adverse entry
through-out his service in the Income-tax Department
except the remarks for the year 1983-84 against

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which he preferred a representation dated 28.9.1984 which remains undisposed of till date; that, therefore, he presumes that the material used for retiring him before age of his superannuation was extraneous and not in accordance with law. The opp. parties in their Counter Affidavit have also laid emphasis that there is adverse remark for the year 1983-84, but failed to point-out any other adverse material against the applicant, which formed basis for passing the impugned order of compulsory retirement. We have heard the counsel for the parties, and perused the record. The extract of the report of the Screening Committee, furnished to us by the Learned Counsel for opp. parties discloses that the applicant was assessed to be 'very good' in the years 1980-81, 1981-82 and 1984-85. He was assessed 'good' in the year 1982-83 and 1985-86. It was only in the year 1983-84 that he was awarded an adverse remark against which a representation, as mentioned above, was made by the applicant as early as on 28.9.1984. During the first sitting of arguments the Learned Counsel for the opp. parties contended that the representation has been disposed of and the result communicated to the applicant. We desired the learned counsel for the opp. parties to produce proof in respect of the same. However, till date, the record has not been produced. Therefore, we have to rely on the contention raised by the applicant, that his representation against the adverse remark for the year 1983-84

Deceased

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has not yet been disposed of. Even otherwise, the facts of this case do not warrant that the applicant had lost his utility or that he had become a deadwood as to be retired in public interest. It is alleged that there was a complaint dated 27.7.1983 against the applicant which indicated gross misconduct on the part of applicant. But it appears no inquiry was made in this regard. If an enquiry was made, its report should have been placed before us or the record containing the same, should have been brought for our perusal. It was not done for the reasons not known to us. We may further mention that the Counter Affidavit does not contain a reference of the said incident or the result of the enquiry at all. We do not know why it was not considered necessary to refer to the same in the Counter Affidavit. We would only like to observe in this regard that once a dispute had arisen before the Tribunal regarding the correctness of the order of compulsory retirement, the material relied upon by the Screening Committee should have been referred to in the Counter Affidavit, and placed before us to enable us to adjudicate the controversy. We may not have reassessed the evidence taken into account by the Screening Committee, but we cannot be deprived perusal of the material, merely on the ground that reassessment of the material should not be done by the Tribunal, although it is highly doubtful, whether the power of reassessment in this case would stand at par ^{with} ~~that~~ the power of reassessment in a disciplinary proceeding. We may also point out that as and when an incident takes place, the same has to find place in the annual remark. The assessment of a Government servant is done on the basis *of performance*

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of his performance. The incident in question is said to be dated 27.7.1983, therefore, we have however, reason to presume that it finds place in the annual remark in the year 1983-84 against which a representation was made by the applicant which remains undisposed of as mentioned above. For this reason as well as, we feel justified in coming to a conclusion that the impugned order of compulsory retirement merely on the basis of remark for the year 1983-84 cannot be sustained.

4. In the result, we set aside the impugned order of compulsory retirement dated 6.4.1987 retiring the applicant from service under Rule 48 of C.C.A. (Pension) Rules 1972 and direct the opp. parties that the applicant shall be treated as being in service without break, he is also entitled to salary from the date of retirement onwards, alongwith other benefits as may be admissible under the rules. The parties are left to bear their own costs.

R. Bhambhani
Member (A)

11.3.1991

Allahabad
(ss)

D.K. Goyal
Member (J) 11.3.91.