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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Registration O.A.No. 102 Of 1987

Bhola Nath ... ...Applicant

Versus

Union of India & Others ... ...Respondents

Hon'ble Mr. Justice K.Nath.V.C.
Hon'ble Mr. K.Obayya, Member(A)

(By Mr. K.Obayya,A.M.)

This application under section 19 of the Administrative Tribunal Act 1985 has been filed for quashing the order of compulsory retirement of the applicant dated 16.1.1986 and for a direction to the respondents to reinstate the applicant in the post of Telegraphman with all consequential benefits of salary and other allowances.

2. The facts of the case briefly are as follows:

The applicant Sri Bhola Nath was appointed as a temporary boy-peon in the year 1950 in the District Telegraph Office, Varanasi, Cantonment. His services as boy-peon were confirmed in 1952. Thereafter he held different posts like Chaukidar, Orderly and Peon etc.-all in class IV and in 1965 he was regularised in the post of Telegraphman. His date of birth recorded at the time of entry into service was 1.1.1936, on the basis of which the normal retirement of the applicant was due after attaining the age of 60 years i.e. in 1996 However the applicant was compulsorily retired from service by the impugned order dated 16.1.1986 under Rule 48 of C.C.S.(Pension) Rules 1972 read with F.R. 56 (J) as a result of a review of service record on completion of 30 years of service.

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3. It is contended by the applicant that his service has been satisfactory through out, no adverse remark was received, on the other hand he won appreciation for his work by the superior officers and in this background the order/ of compulsory retirement was harsh and arbitrary. The further contentions of the applicant are that he is a class IV employee and entered service prior to 1966 and in such cases compulsory retirement should be only after attaining 55 years of age and not earlier, and that the impugned order has been passed by the Superintendent Incharge who is not the competent authority. The High Power Committee which assessed his record is not competent to adjudge suitability or otherwise of the applicant to be continued in service, that it is only the appointing authority which can assess the record and come to a decision in this regard. It is further contended that the record relied upon to retire the applicant were not made available to the applicant, consequently, the applicant was not able to defend his case . It is alleged by the applicant, that the action of the authorities in retaining older employees in service, and retiring him earlier is discriminatory. It is also alleged that while he was working in the house of Subrahamanayam,Superintendent Incharge, he could not attend to his work due to illness of his wife. Consequently he was transferred to Telegraph Office, B.H.U., a notice for misconduct was issued (Annexure No. 3) and on his tendering unconditional apology, the enquiry was dropped, but the Superintendent

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Incharge bore grudge against the applicant and with a view to punish him the impugned order was passed.

4. In the counter filed by the respondents the stand taken is that the case of the applicant alongwith others who had completed 50 years of age or 30 years of service was considered by the High Power Committee to assess their suitabiligy to be continued in service, in accordance with instruction of the Ministry of Home Affairs contained in OM 250/ 3/14/77-ESTT(A) dated 5.1.1979 communicated by General Manager Telecommunication U.P.Circle Lucknow in his letter dated 18.5.1978 and the Committee recommended that the applicant was not fit to be continued in service. The High Power Committee is vested with powers to review the cases of class III and IV employees to adjudge their suitability to continue in service as laid down under Rule 48 of the C.C.S. (Pension) Rule 1972 and F.R. 56(J). The Superintendent Incharge was competent to pass the orders. The applicant was paid three months salary in lieu of notice for compulsory retirement. The record of the applicant has been found to be unsatisfactory, there were adverse entries almost through out his service. These adverse entries were communicated to the applicant. The applicant was also punished with censures, stoppage of increments etc. The allegation of discrimination and malafides is denied. According to the respondents, the order to retire the applicant was done in Public interest, as he was found unfit to be continued in service, because of his bad record.

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5. In the Rejoinder the applicant has stated that his qualifying service has not been calculated correctly and he has also reiterated the allegations of malafide against the Superintendent Incharge.

6. We have heard Sri Deo Sharma, Learned Counsel for the Applicant and Sri Shishir Kumar, Brief Holder of Sri N.B.Singh for the respondents. In his eloquent and lengthy submissions, the Learned Counsel for the applicant assailed the impugned order on the ground that the High Power Committee was not competent to assess the record of the applicant to adjudge his fitness or otherwise for further continuation in service. It is only appointing authority who is competent to make such assessment. His further point is that the Superintendent who passed the order was only Incharge Superintendent and hence he was not competent to pass the order. Therefore, the impugned ofder is void without jurisdiction and bad in law. This argument was countered by the Learned Counsel for the Respondents who statad that the High Power Committee was constituted in accordance with the instructions of the Ministry of Home Affairs and this Committee consisted of officers higher in rank to the Appointing Authority and the Committee was vested with the powers to review the cases of all those employees who crossed 50 years of age or 30 years of service to assess their fitness or otherwise for further continuation in service. On the question of competency the Learned Counsel's submission is that the Superintendent who passed the order was in full charge

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of the post vested with all the powers and the jursidiction attached to the post and he was not in routine charge of the post. He was competent to pass the order being the Appointing Authority of the applicant and as such there is no violation of any rule or law either in consideration of the case of the applicant by the High Power Committee or in the order of compulsory retirement passed by the Superintendent Incharge. we have given our consideration of the rivalcontentions. We have verified the instruction of the Ministry of Home Affairs about the constitution powers etc of the High Power Committees. The role of the High Power Committees is akin to that of Departmental Promotion Committees, only the purpose is different. The High power Committee is a higher level Committee and the purpose of constituting such Committees is to ensure greater objectivity and the fairness in assessment of the record of the employees whose cases are before them for an assessment whether the employees are fit to be continued in service or to be retired as unfit for further service. The record also discloses that Superinendent Incharge was fully competent to exercise the powers of Appointing Authority being in full charge of the post. In these circumstances we find no substance in the contentionsof the Learned Counsel for the Applicant.

7. The learned counsel's next point was on

discrimination of the applicant, in that employees older to the applicant were allowed continue in service while the applicant was retired. The learned counsel for the respondents answered this point by saying that continuation or retirement was not on the basis of length of service but on assessment of fitness or otherwise for further continuation in service. Employees found suitable though older were allowed to continue and that this hasnothing to do with the age factor We agree with the Learned Counsel for the Respondents on this point. Compulsory retirement is only in such cases where employees are found to be unfit for continuation in service and this has no relevance to the age factor.

8. The Learned counsel for the applicant pointed out that the case of the applicant who is a class IV employee can be taken up for review under Rule F.R.56(J) only on his attaining 55 years of age and not earlier. The applicant was only 50 years of age at the time of review. The learned counsel for the respondents stated that the compulsory retirement of the applicant was after qualifying service of 30 years as laid down in Rule 48 of the CCS(Pension) Rules 1972. His contention is that employees can be compulsorily retired in public interest either on completion of 30 years qualifying service or attaining the age of 50/55 years. Retirement of class IV employees is considered after the attaining of 55 years of age or on completing of 30 years of qualifying service. We have carefully examined the rules. Rule 48 of CCS (Pension) Rules 1972 reads as under:

48. "Retirement on completion of 30 years' qualifying service

(1) At any time after a Government servant has completed thirty years' qualifying service-

(a) ... ...

(b) he may be required by the appointing authorityto retire in the public interest, and in the case of such retirement the Government servant shall be entitled toa retiring pension:

Provided that-

(a) ... ...

(b) the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice:"

9. The above rule clearly lays down that Government servant after completing 30 years of qualifying service may be retired by the appointing authority in public interest by giving a notice of 3 months or by paying salary and allowance for 3 months in lieu of such notice. This rules makes no distinction between any class of Government employees, and governs all the employees. The provision relating to retirement is also contained in Rule F.R.56(J). We may notice that rule which is as follows:

(j) 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 Government servant by giving him notice of not less than three months in writing or three months'

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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 '8' 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."

The proviso to above rule clearly indicates that these clauses (i) and (ii) are not applicable to the Government servant referred to in clause 'e' who entered in Government service on or before 23rd July, 1966 . Clause 'e' under F.R.56 lays down that a Government servant in clause IV service shall retire after attaining 60 years of age. In other words the stipulation of 55 years for compulsory retirement is not applicable to class IV employees. The question whether an employee is liable to be retired in public interest even before attaining the age of supernnuation after 30 years of qualifying service or after attaining 50/55 years of age has been clarified in the instructions issued by Ministry of Home Affairs. These instructions are contained in appendix 10 page 337 in Swamy's Pension Compilation (corrected up to 18th October 1987-II Edition), para 1(4) which is on the rules position lays d-own:

(4) Provision also exist in Rule 48 of the

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C.C.S.(Pension) Rules, 1972, for the retirement of a Government employees by giving him three months' notice, if it is necessary to do so in public interest, after he has completed 30 years of qualifying service for pension. In other words, a Government ~~Government~~ employee who may belong to Group 'A', 'B', 'C', or 'D' can be prematurely retired, irrespective of the age at the appropriate time, after he has completed 30 years of qualifying service."

10. From the above it is very clear that Government servant can be retired on completion of 30 years of qualifying service irrespective of his age at the appropriate time. The applicant has completed 30 years of qualifying service, as such review of his case for compulsory retirement cannot be said to be inviolation of any Rule.

11. The Learned Counsel for the applicant's further submission was on violation of the provisions of Industrial Dispute Act 1947. His contention was that the applicant is a workman and his retirement without complying with the provisions of section 25 F I.D.Act is void. In support of his contention that the applicant is a workman and that the Postal Department is deemed to be an 'Industry' for purpose of the Industrial Dispute Act, he relied on the decision of Kerala High Court in K.R.B.Kaimal Vs. Director of Postal Services Trivandrum (1978) (37) F.L.R. page 379 wherein it was held the postal and Telegraph Department which is a public utility service comes within the ambit of Industry as defined under the I.D.Act. He also cited the case of Phool Chand Vs. State of Rajasthan and others (S.L.J. 1986) (1) page 222. The Rajasthan High Court in the above case held that compulsory retirement of a workman in violation of

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section 25 F of the Industrial Dispute Act is a retrenchment. In that case the applicant who was working in a Co-operative Society was terminated without any notice or compensation and the order of termination was quashed. The case before us is distinguishable, in that the applicant was given a notice with three months salary.

11. In Mahabir Vs. D.K.Mittal and another 1980 (A.S.L.J.) page 218 decided by Patna High Court it was held that:

> "Once it is established that the petitioner was a workman within the meaning of the Act and the order of compulsory retirement amounts to termination by the employer of the services of the petitioner, then it will amount to retrenchment within the meaning of the Act."

12. The learned counsel for the respondents submitted that the Postal and Telegraph Department is not an 'industry' and that the provisions of 25 F of the Industrial Dispute Act are not applicable. His further submission was that section 25 F is in respect of "retrenchment" of a workman whereas the applicant's case is one of "retirement" with all other retiral benefits. We have carefully examined the legal position and also examined the relevant provisions of the Industrial Dispute Act. Section 25 F of the Industrial Dispute Act is in the following terms:

> "25-F. Conditions precedent to retrenchment of workmen:
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> No workman employed in any industry who has been in continuous service

for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette.

13. The above Section mentions about retrenchment and not of retirement and that the workman can be retrenched by giving one months' notice or wages for the notice period, and that the workman is also entitled for retrenchment compensation calculated at 15 days average pay for every completed year of continuous service.

14. Our attention has not been invited to any decision of our Tribunal on the question whether or not the Telegraph Department is Industry within the meaning of the Industrial Disputes Act. A telegraph service is a public utility service within the meaning of Section 2(n) of the Industrial Disputes Act. But every public utility service is not ipso facto an Industry as defined in clause (j) of Section 2 of that Act. The expression means "any business, trade, undertaking, manufacture or calling of employers" and includes any service of workman. A telegraph service could at best be an undertaking or service within the meaning of Section 2(j) of the Act; it is certainly not the rest. It will be

noticed that the definition uses the expression "employers" in one context, that is in the context of business, trade etc., and of "workmen" in another context namely "calling, service, employment etc". The expression 'Workman' is defined under Section 2(s) which means a person "employed in any industry". Thus clause (j) while defining industry has in its view a workman, and Section 2(s) while defining a workman has in its view an industry. It is plain enough that the question whether a particular undertaking is an industry and whether a person in service in the undertaking is a workman must necessarily depend upon the particular facts of a case. The facts should pin-point a particular employer as defined in Section 2(g) of the Act which requires an authority to be prescribed by the Central Govt. in this behalf or failing which the Head of the Department. If the employer of a particular workman is not Head of the Department but some subordinate officer, as may perhaps be the case in respect of the applicant who is only a telegraph man, it will have to be decided whether such person constitutes an employer within the meaning of the Act and if not whether such employer and the person working under him go out of the definition of an industry and workman under clauses (j) and (s) of Section 2 of the Industrial Disputes Act. It may also be relevant to consider whether the workman's assignment is confined to a particular office or it is transferable to several offices or sub offices.

15. Further certain public utility services may be in the nature of sovereign functions of the State which undoubtedly would be outside the scope of the industry: See the case of Bangalore Water Supply Corporation Vs.

A.Rajappa 1978 SC 550. Thus the Lucknow Bench of this Tribunal has held in the case of Manoj Kumar Srivastava Vs. Union of India & Others, O.A. No.89 of 1989 decided on 3.4.90 that the Accountant General exercises sovereign powers so that the provisions of Section 25-F of the Industrial Disputes Act do not apply to the employees in that office. The question whether or not the Telegraph Department also exercises sovereign functions will depend not only upon the nature of the duties but also upon the statutory provisions creating telegraph services. It is common knowledge that no private person can discharge the functions of a telegraph office of the Govt. The sovereign functions of the State are drawn not only from the common law but also from statutory provisions. Under Section 4(1) of the Indian Telegraph Act, 1985 the Central Govt. has exclusive privilege of establishing, maintaining and working telegraphs. If a person establishes, maintains or works a telegraph in contravention of Section 4, he is liable to be awarded a punishment of imprisonment under Section 20 of that Act. Since the matter has not been convassed before us in this light,we are unable to say anything about it.

16. We may mention to the Hon'ble High Court of Kerala which has taken pains to deal with a large number of judicial pronouncements, none of which directly dealt with the P & T Department, came to the conclusion that the Postal Department is an industry but the judgement

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neither touches upon the point indicated above nor dealt with the employees of the Telegraph Department as distinguished from Postal Department. We find no reason to assume that if a Postal Department may be treated to be an industry as the Hon'ble High Court of Kerala found, the Telegraph Department should also be held to be an industry. What we want to put across is that neither the parties have pleaded material facts on which the question of the Telegraph Department to be an industry or otherwise could be decided nor the record contains adequate material on the basis of which we could arrive at a definite conclusion this way or that. The burden of proof is always upon the claimant and in that sense we may say that the applicant has not been able to establish that the Telegraph Department is an industry. We are not in a position to dilate any further on the subject.

17. Nevertheless, we are clearly of the opinion that compulsory retirement is not retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act. The expression is defined as follows :-

> " 'retrenchment' means the <u>termination</u> by the employer of the service of a workman for any reason whatsoever,or otherwise than as a punishment inflicted by way of disciplinary action, but ~~does~~ does not include :
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> (a) voluntary retirement of the workman; or
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> (b) retirement of the workman on reaching the age of superannuation .....; or
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> (bb) termination of the service as a workman as a result of non-renewal of the contract of employment.....; or
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> (c) termination of the service of a workman on the ground of continued ill-health."

18. A comprehensive appreciation of this definition will indicate that the foundation of retrenchment is 'termination'. The termination may be for whatever reason or in whatever manner, but it must be termination. The essential element of termination is that as soon as the services of a person are terminated, all bonds, rights and liabilities are immediately snapped; there is no continuity of any right or benefit whatsoever after termination, except perhaps such rights and benefits are expressly provided by the Statute. Thus on termination a workman is entitled to one month's notice and certain compensation under Section 25-F of the Industrial Disputes Act. Apart from what has been specifically protected by the statute nothing survives between the employer and the employee as soon as termination takes place. On the contrary, the incidents of compulsory retirement are entirely different and protect certain rights and benefits to the retired employee till he dies. He gets a pension if the post is pensionable. He gets gratuity, leave encashment. He holds the position of what is known as a Govt. pensioner. As and when additions to Dearness Allces are made in pursuance of the policy of the Govt., the pensioner gets a benefit of that enhancement. Indeed, the pensioner's family is also entitled to family pension and some other benefits. None of these benefits accrues to a person whose services have been terminated. We are definitely of the opinion therefore that retrenchment as defined in Section 2(oo) of the Industrial Disputes Act must consist of termination of services which compulsory retirement is not.

19. We may refer to the exclusionary clauses in the definition of retrenchment to show that these exclusionary

clauses do not really affect the true import of the expression 'retrenchment'. According to clase (a) of Section 2(oo) voluntary retirement of workman is not retrenchment. We wonder why that should have been necessary for the legislature to say , because the definition of the expression 'retrenchment' requires 'termination by employer'. Obviously,a voluntary retirement was outside the definition. The later phrase in Section 2(oo) stipulating termination "otherwise than as a punishment inflicted by way of disciplinary action" has to be appreciated in the context and it could only mean termination otherwise by the employer. If that was not so then a resignation by the workman would also fall within the meaning of retrenchment; but obviously that is not so. Clause (b) of Section 2(oo) affording exclusion to "retirement of the workman on reaching the age of superannuation" does not mean that while superannuation retirement is excluded, compulsory retirement is not. It is noticeable that clause (b) excludes retirement on superannuation if the contract of employment stipulates so. If the contract does not stipulate, surely it cannot be said that a workman is entitled to continue to be in employment till eternity. The expression "contract of employment", we think, should also include conditions of service, and if that be so,compulsory retirement being a condition of service would also fall under clause (b) of Section 2(oo). Be that as it may, it is not termination in any case and therefore, for reasons recorded, we hold that compulsory retirement is not retrenchment.

20. The learned counsel for the applicant has placed reliance upon the decisions of the Patna High Court in

the case of Mahabir Versus D.K.Mittal and Another 1980 AISLJ 218 and Rajasthan High Court in the case of Phool Chand Versus State of Rajasthan and Others 1986(1) SLR 222 to show that compulsory retirement amounts retrenchment. We have carefully gone through these two decisions but we notice that the situations discussed by us above have not been considered there. With great respect, therefore, we are unable to subscribe to that view. On a careful consideration of all the aspects, we hold that the applicant is not entitled to the benefit of Section 25-F of the Industrial Disputes Act.

21. The learned counsel for the applicant also raised the plea of mala fide. The Superintendent Incharge was unhappy with the applicant as the letter had not worked in the house of Superintendent. This, in our opinion, has no basis whatsoever, since the decision to retire the applicant was taken by High Power Committee and not by the Superintendent Incharge.

22. The contention of the applicant that his service has been satisfactory throughout his career, is found to be a misstatement of fact. In para 9 of the counter, a list of the adverse remarks and punishments awarded is mentioned. From the service record, it is noticed that adverse entries were communicated to the applicant during the year 1960-61, 1965-66, 1968-69, 1969-70, 1972-73, 1973-74, 1975-76 and 1981-82 and also punishment of censure was awarded to him thrice in 1961 and increments were also withheld in the year 1984. In para 6(1) of the petition, the applicant admits that he also tendered unconditional apology to the notice dated 24.4.1984 given

to him for misconduct. In this background, the record of the applicant can never be said to be satisfactory. The High Power Committee has considered the record of the applicant and recorded that the overall assessment of confidential record of the applicant does not justify his continuing in service and therefore, he should be retired in public interest. The certificate of service contained in Annexure-5 to the application indicates that the applicant has completed 30 years of qualifying service and that department has not made any miscalculation of his service in putting up his case for a review on the basis of thirty years of the qualifying service.

23. For the reasons discussed above, we are of the opinion that there is no merit in this application and it is accordingly dismissed with no order as to costs.

Member (A) Vice Chairman

Dated the 18th July, 1991.

RKM/SS