

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

(A2/1)

(7)

Original Application No: 220 of 1988

This, the day of

R.P.Shukla; S/O Shri Mata Prasad Shukla,
R/O Type III/7 Income Tax & Central Excise
Colony, Laxman Bagh, (Swaroop Nagar), Kanpur.

..... Applicant.

By Advocate Shri N.N.Sinha

Versus

Union Of India & Ors.

..... Respondents.

By Advocate Shri Ashok Mohiley

CORAM:

Hon'ble Mr. T.L.Verma, Member-J
Hon'ble Mr. K.Muthukumar, Member-A

J U D G E M E N T

By Hon'ble Mr. T.L.Verma, J.M.

The subject matter of challenge in this O.A. is order dated 31st March, 1987 whereby the applicant has been retired from service w.e.f. 1.4.1987.

2. The facts giving rise to the present application briefly stated are that the applicant was appointed as Lower Divisional Clerk in Income Tax Office on 25.11.1955. He was promoted as Upper Divisional Clerk on 10.2.1964, as Head Clerk on 22.6.1980 and as Supervisor Gr. II on 22.2.1985. On the relevant date he was posted as Supervisor Gr. II at Kanpur Income Tax Office. The applicant ~~has~~ filed representation against

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his premature retirement on 13.4.1987 but the same has not yet been disposed of. The order of compulsory retirement has been assailed on the ground that the same is mala fide and in wrong exercise of jurisdiction.

3. The respondents have opposed the application. It has been averred in the Counter Affidavit that the impugned order of compulsory retirement was passed on the basis of recommendation of the Review Committee. The Review Committee has made the recommendation after examining the entire record of service of the applicant.

4. The learned counsel for the applicant submitted that the impugned order has been passed in violation of the guidelines issued by the Govt. of India, Ministry of Home Affairs O.M. dated 5.1.1978 regarding review of cases of employees who have completed 30 years of qualifying ~~xxxv~~ service. According to the guidelines given by the Ministry of Home Affairs, a Govt. servant can be retired if his integrity is doubtful or that he is found to be ineffective. But, a Govt. servant who is promoted within last 5 years of his services, cannot be retired.

5. It was stated that there is absolutely no material or even whisper against the integrity of the applicant. So, the question of his being compulsorily retired on that ground cannot arise. So far as the

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question of the applicants being ineffective is concerned, it was stated that the applicant has earned good and satisfactory remarks on his work and conduct throughout his career. The impugned order, it was contended is not supported by evidence and as such is arbitrary.

6. We have perused the service record of the applicant and we find that in 1963, a memo was issued ^{to} ~~against~~ the applicant on the allegation of disobedience, insubordination and gross misconduct. A penalty of censure was awarded against him. In 1968 chargesheet was issued against him and he was put under suspension. In 1970, penalty of withholding ^{of} increments for 3 years was passed against him. Again in 1973, chargesheet was issued to him and on 5.9.1973 ^{and thereafter} ~~LF~~ warning was issued to him. This penalty of warning however, was converted into penalty of censure vide order dated 1.11.1973. Again in 1974, memorandum of charges was issued to him and in 1976, penalty of withholding 5 increments was imposed. The penalty of ~~withholding~~ ^{OR} withholding of increment, however, was moderated to censure by the Appellate Authority. The applicant was promoted as Supervisor Gr. II on 22.2.1985. It is well settled that if, a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit/selection and not upon seniority. The promotion of the applicant to the post of Supervisor Gr. II, it was ^{by the learned counsel for the respondent} submitted ~~was~~ on seniority-cum-suitability basis and as such this promotion will not take away the sting of the adverse entries in the service record of the applicant. ~~In support of this argument, the learned~~

7. The law on the subject of compulsory retirement has been laid down by the Supreme Court in Baikunth Nath Das Vs. Chief Medical Officer (Baripada) reported in AIR 1992 page 1020. The Supreme Court has held;

The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) malafide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasonable person would form the required opinion on the given material in short; if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above.

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The observation of the Supreme Court at para IV extracted above clearly show that where a Government servant is promoted to higher post notwithstanding adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority. We are unable to persuade ourselves to accept the contention of the learned counsel for the respondents that above principle is applicable only where the promotion is to the selection post. Use of the words 'More so, if the promotion is based upon merit (selection) and not upon seniority' in our opinion ^{only} lay extra emphasis on promotion on merit but does not exclude those cases in which promotion has been made on the basis of seniority. In our opinion, the above dictum applies to both promotions on the basis of selection and promotion on the basis of seniority-cum-suitability.

8. The decision of the Supreme Court in Baikunth Nath Das' case has been followed in the case of Union of India Vs. Dulal Dutt reported in 1993 Supreme Court Cases (L&S) page 403 and in S. Ramchandra Raju Vs. State of Orissa reported in 1994 (5) SC 15 Judgements Today page 459. The Supreme Court in R. Chandra Raju's case has held as follows;

It is thus settled law that though the order of compulsory retirement is not a punishment and the government employee is entitled to draw all retiral benefits including pension, the government must exercise its power only in the public interest to effectuate the efficiency of the service. The dead wood need to be removed to augment efficiency. Integrity in public service need to be maintained. The exercise of power of compulsory retirement must not be a haunt on compulsory retirement.

public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace in public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the back drop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the government should form the opinion that the government officer needs to be compulsorily retired from service. Therefore, the entire service record more particular the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer.

9. After the promotion of the applicant to the post of Supervisor Gr. II, only two remarks have been recorded in his ACR. In the remark for the year, 1985-86, it has been mentioned that there was no complaint against the integrity of the applicant. His performance has been assessed as good in all areas of his function. Similar is the report for the year 1986-87, there is no adverse material in the ACR of the applicant after his promotion as Supervisor Gr. II on 22.2.1985. There was adverse material against the applicant, as would appear from the perusal of his characterroll, relating to the period from 1963 to 1979. These entries mainly indicate that the applicant had been subjected to several departmental inquiries and had been censured or punished by imposing minor penalties. These punishments, in our opinion, lost their relevance after the applicant was promoted to a higher grade notwithstanding the punishments imposed in the departmental proceedings referred to in his ACR. If the above adverse material is excluded from consideration

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for determining whether there is material to support the decision of the respondents to retire him prematurely, we find that there is absolutely no evidence to support the decision of the respondents.

10. We have perused the minutes of the Review Committee. The observations of the Review Committee is extracted below;

Ordinarily, an official who has been promoted in the preceding couple of years should not be retired on the question of ineffectiveness or incompetence as is in this case, but we have kept this fact in view and, therefore, tried to assess the usefulness of the official to the Department by looking to his total record. Once his total record from the date he entered in government service till today, is examined, it is found to be good, average or colourless. It may be that the officers writing the CCRs did not have encourage to record an adverse entry but the usefulness of the official according to us, is negative to the Department if his total CCR is taken into consideration merely, because a promotion has been obtained on pure fitness basis by the official, he does not deserve to be retained in government service because the public servants are supposed to discharge their functions most satisfactorily conscientiously and effectively which enhances public interest. This is not a case, where we can say that he has been useful for government service.

From a bare reading of the Review Committee's observation, it ~~appears~~^{special} that Review Committee was conscious of the fact that an official who has been promoted in the preceding couple of years should not be retired ~~in view~~^{on the ground} of unfitness or incompetence. The Review Committee, ^{upon} seems to have ^Lswayed by the adverse material referred to above in deciding that the applicant should be retired prematurely.

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11. The question, therefore, is whether the respondents, while exercising its power of compulsorily retiring the applicant under Rule 48 of the Central Civil Services (Pension Rules) 1972 have exercised ~~the power~~ power in public interest and ^{whether} ~~the same~~ is legal. In order to sustain the order of compulsory retirement it has to be shown that the order has been passed in public interest and that the same has been passed on the subjective satisfaction of the government. The decision of retiring a government servant compulsorily is not to be examined by the Courts exercising the power of judicial review as an appellate Court. The orders of compulsory retirement, ~~can~~ however, ^{can} be interfered with if it is found to have been passed malafide or that it is based on no evidence or that it is arbitrary in the sense that no reasonable person would form the required opinion on the given material. The learned counsel for the applicant neither alleged that the impugned order has been malafide nor there is material on the record as may ~~lead~~ to such an inference. We, therefore, find that the element of malafide is completely absent in this case. From the material on record, it is apparent that there is no allegation that the applicants' integrity is doubtful. We, therefore, accept the contention of the learned counsel for the applicant that the impugned order has ^{not} been passed on that score.

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12. The other two grounds by which the order of compulsory retirement has been assailed are that the same is based on no evidence and/or that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material. We have perused the ACRs of the applicant for the period, 1980-81 where it has been stated by the Reporting Officer in all the columns 'very good, good, very good'. The Reviewing Officer has assessed the applicant as a ^{sincere} ~~serious~~ and hard working young man and graded him as 'very good'. In the confidential report for the year, 1981-82 also, it has been stated by the Reporting Officer that his performance is good. The Reviewing Officer, however, has ^{graded} ~~marked~~ him ^{as} ~~and average~~ him as an average officer. In the remarks for the year, 1982-83 also he has been assessed by his Reporting Officer as good in all the areas of his performance. In the general remarks in column No. 20 he has been assessed as good. The Reviewing Officer, however, has not given his ⁱⁿ ~~com~~ment. In the remark for the year 1983-84 also his work has been assessed as good by the Reporting Officer on all aspects of his performance. The Reviewing Officer has although not given any grading but has mentioned in column No. 24 that he was fit for promotion. The remarks for the year, 1980-81, 81-82, 83-84 relate to the period immediately preceding the promotion of the applicant. We have already noted that ⁱⁿ the 2 remarks recorded on the work and conduct of the applicant ~~also~~ after his promotion ~~of the applicant~~, the Reporting Officer has stated good ~~by~~ work good in all the columns. The Reviewing Officer however, in his remark for the year, 1985-86 has assessed

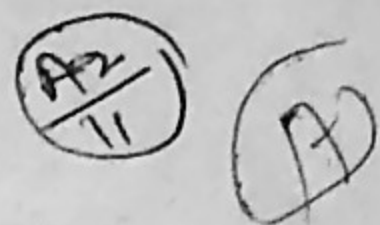
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the applicant as average worker but he ^{has} agreed with the remarks recorded by the Reporting Officer describing the performance of the applicant in most of the column as good. On the basis of the remarks referred to above, after excluding the ^{prior to his promotion} adverse material from consideration it is difficult for us to accept the ~~xx~~ contention of the learned counsel for the respondents that the applicant has lost his utility in service and has become a dead wood and so in public interest he is required to be compulsorily retired before the age of superannuation which is 31st January, 1994.

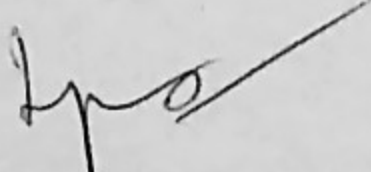
13. The learned counsel for the respondents has placed reliance on the decision of the Supreme Court in Dr. S.M. Ilyas Vs. Indian Council of Agricultural reported in AIR 1993 Supreme Court, Page 384. The Supreme Court in the said case set aside the order of the Tribunal quashing the order compulsorily retiring the applicant on the ground that ~~the~~ he was subjected to several departmental inquiries from time to time and had been placed under suspension for more than 9 years and large sums of money were recovered from him by orders made in certain proceedings. The ratio of the said case of the respondents, in our opinion, has no application to the facts of the present case. We have already noted that the minor punishments awarded against the applicant in some of the departmental proceedings drawn up against him between 1963 and 1979 were taken into account at the ~~time~~; he was promoted to the superior scale, hence, those punishments had lost their sting and were not relevant for the purpose of determining whether the applicant should be compulsorily retired or not.

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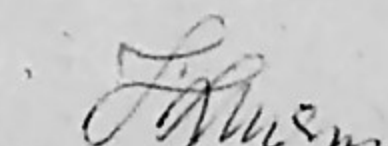


14. For the reasons stated above, we are satisfied that the impugned order is based on no evidence and that it is arbitrary in the sense that no reasonable person would form the required opinion on the given material and as such it cannot be sustained.

15. In the result, we allow this application and quash the order retiring the applicant compulsorily. The applicant has already completed 58 years on 31st January, 1994. Hence, he cannot be reinstated now. He will, however, be treated to ^{have} been service for all service benefits including pay and allowances for the intervening period. There will be no order as to costs.


Member-A

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Member-J

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