

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
A L L A H A B A D

Allahabad: Dated this the 26th day of ~~June~~^{Sept} 1996

ORIGINAL APPLICATION NO. 304 OF 1988

Hon'ble Mr. S. Das Gupta A.M.
CORAM : Hon'ble Mr. T.L. Verma J.M.
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Bhanu Pratap Singh s/o late Thakur Mahadev Singh,
resident of 235/5, Begum Bagh, Hari Bhawan,
Shanti Niwas, Meerut.

- - - - - Applicant

C/A Sri R.G. Padia

VERSUS

1. Union of India through its Secretary,
Ministry of Finance, Government of India,
New Delhi.

2. The Chairman, Board of Central Revenue of
Incometax, Central Secretariat, North Block,
New Delhi.

JK 3. The Commissioner of Incometax,
Bhanisali Ground,
Meerut.

4. The Inspecting Assistant Commissioner
of Incometax, Bhanisali Ground,
Meerut.

- - - - - Respondents

C/R Sri N. B. Singh

ORDER

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

This application under section 19 of Administrative Tribunals Act, 1985 has been filed for quashing the order dated 18.7.1986, retiring the applicant compulsorily on payment of three months pay in ^{lieu} advance of notice and order dated 8.11.1988 rejecting the appeal preferred by the applicant against ^{his} compulsory retirement and for a declaration that the applicant continues to be in service till the date he attained ^{the age of} ~~58 years or age xxx~~ superannuation and for making payment of salary for the said period.

2. The applicant was appointed as Lower Division Clerk in the office of Income Tax Office, Meerut on 29.1.1960. He was promoted to the post of Upper Division Clerk by order dated 11.6.1980 (annexure A-1) It is stated that the work and conduct of the applicant as Upper Divn. Clerk had been brilliant in as much as there has been no complaint against the applicant except an adverse remark on his work for the year 1984-85 that punctuality of the applicant was not adequate. The order of compulsory retirement, it is alleged, is arbitrary and perverse.

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The further case of the applicant is that the Commissioner of Income tax is his Appointing Authority and as such the impugned order of compulsory retirement passed by the Assistant Commissioner of Incometax is void, illegal and without jurisdiction.

3. The respondents have resisted the claim of the applicant. In the counter affidavit filed on behalf of the respondents ^{has} ~~in which~~ it has been stated

that the Assistant Commissioner of Income Tax is the Appointing Authority of the applicant and as such the impugned order of compulsory retirement is Valid and within the jurisdiction. The further case of the respondents is that ^{service record of} ~~because~~ the applicant was ^{examined} ~~reverted~~ by the Screening committee and Reviewing committee and it was found that ^{of the applicant} ~~the~~ continuance ^{not} ~~in~~ service was ^{not} ~~in~~ the public interest, Therefore, the Assistant Commissioner of Income Tax in exercise of power conferred by Clause 1(b) of Rule 46 of CCS (Pension rules) 1972, ^{the applicant} ~~applicant~~ has ~~been~~ retired with immediate effect on his completing 30 years of service, qualifying for pension on 31.1.1985.

4. We have the learned counsels for the parties and perused the records.

5. Clause 1 of Rule 48 of CCS (Pension rules) reads as under :

RETIREMENT ON COMPLETION OF 30 YEAR OF
QUALIFIED SERVICE

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- a) at any time after the government servant has completed 30 years of qualifying service.
 - b) he may retire from service or he may may be required by the Appointing authority to retire in public interest and in the case of such retirement, government servant shall be entitled to a retiring pension.

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The provision of the rule referred to above thus gives power to the competent authority to retire a government servant, after he completes 30 years of qualifying service. The government of India, department of Personnel has issued instruction regarding premature retirement of Central government servant in Government of India, Ministry of Home Affairs, O.M. No.25013/140/77-Estt(A) dated 5.1.1978. The case of the government servant for compulsory retirement ~~is~~ governed by FR 56(5) or Rule 48 (CCS (Pension rule) 1972 or CSR 459 (4) should be reviewed by the Screening committee six months before they attain age of 54-55 years or complete 30 years of service/30 years of qualifying service or whichever occurs earlier. The criteria followed by the committee in making their recommendation is that ^(a) a government servant whose integrity is doubtful will be retired :

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- b) government employees who are found to be ineffective will also be retired.
 - c) while entire service record of the official should be considered at the time of review, no employee should ordinarily be retired on the ground of ineffectiveness, if his service during the preceding five years or where ~~if~~ he has been promoted to higher post during that five years his service to the higher post has been found satisfactory.
 - d) No employee ordinarily be retired on the ground of ineffectiveness

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if in any event, he would be retiring on superannuation within a period of one year

6. The learned counsel for the applicant submitted that according to rule 48 of the CCS(Pension rules)1972, it is ~~the~~ only Appointing Authority, who could retire a government servant after completion of 30 years of qualifying service or on attaining the age of 55 years. The applicant, it was submitted, was appointed as Upper Division Clerk by the Commissioner of IncomeTax by the order dated 11.6.1980 (Annexure A-1), Therefore, it was submitted, the impugned order passed by the Asstt. Commissioner of IncomeTax is void and without jurisdiction. The argument of the learned counsel for the applicant has been controverted by the respondents in their supplementary counter affidavit and it has been submitted that according to the provision of Central Board of Revenue office Manual Vol.I 1954, the Inspecting Assistant Commissioner of IncomeTax ^{exercising administrative} ~~in exercise of departmental~~ jurisdiction is the Appointing authority and of Class III and class IV staff of the IncomeTax department. In support of his contention, photocopy of chapter 9 page 219 of Central Board of Revenue Manual has been annexed. According to the above annexure, Inspecting Assistant Commissioner of IncomeTax is the appointing authority of all class III and Class IV staff of IncomeTax office. The Commissioner of IncomeTax has been shown as the Controlling authority. The learned counsel for the respondents submitted that the Commissioner of IncomeTax approved the appointment of the applicant as Upper Division Clerk by order dated 11.6.1986 and after having

obtained his approval, the

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obtained the approval, the Incometax Officer Circle I issued the appointment letter, appointing the applicant as Upper Division Clerk by order dated 29.7.1980 (annexure 2A of the Supp. Counter affidavit. The order dated 11.6.1980 clearly shows that the Commissioner of Incometax had only approved the appointment of Lower Division Clerk (including the applicant) mentioned in the order (annexure A1) documents to the application and (annexure 2 A to the Supp.C.A.) read with the provision of Central Board of Revenue office Manual (Ann.1) to the Supp.C.A. lead to the conclusion that the Incometax Officer/Assistant Commissioner of Incometax is the appointing authority of class III and IV of Incometax department. That being so, the Assistant Commissioner of Incometax was the appointing authority of the applicant who was Upper Division Clerk, a group III post. We, therefore, ^{find} no merit in the contention of the applicant that the impugned order of compulsory retirement has been passed by an officer, who was not competent to do so.

7. In view of the foregoing conclusion, the second question that falls for our consideration is whether the impugned order of compulsory retirement is perverse and has been passed on no evidence.

8. As we have already seen above, a government employee can be retired, if there is allegation against his integrity. From the pleadings and the annexures attached thereto, it would appear that no allegation against the integrity of the applicant has been made. Therefore the applicant could not have been retired for reason of doubtful integrity.

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9. Respondents have annexed photo copy of the Minutes of the Meeting of Reviewing Committee (Annexure-3) constituted for considering cases of officials of group 'C' which on the recommendation of the Screening Committee retired the applicant pre-maturely. We have perused the Minutes of the Review Committee meeting. The only allegation against the applicant is that he was habitual late comer. In the minutes, reference has been made to the remarks for the year 1976-77 about his late coming and also similar remark for the year 1980-81. In the A.C.R. for the year 1982-83 remark against punctuality "INADEQUATE" for the year 1983-84 "Not Good - Regularly late comer" and for the year 1984-85 (inadequate). The relevant observations of the Reviewing Committee is as follows :-

Sh " The overall review of the work of this official shows that he has not only been ineffective in the discharge of his duties, but he has been positively negligent in the matter of attending the office in the time and has not shown any improvement inspite of repeated warning-oral and those recorded in the CCRS. This indicates that he has incogni-ble attitude which cannot improve by any amount of persuasiveness of reformative approaches, as has been proved by past record in the matter of attendance. Thus this official has not only been in-effective in the matter of discharge of his duties but, is positively not amenable to any discipline in the department and cares nothing about entries in his CCRs. No public interest can be served by retaining such officials in the department.

10. From the plain reading of the proceedings of the Review Committee, it is clear that the only ground on which the impugned order of compulsory

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retirement has been passed is the habit of the applicant of late coming. It has been very specifically mentioned by the Review Committee that the remarks on other area of the service of the applicant varies from average to good. That being so, the question that arises for determination is whether the remarks on punctuality alone are sufficient to brand the applicant as ineffective so as to justify his compulsory retirement. For proper appreciation of this question reference to para 3-B of OM No. 25013/14/77 Estt. (A) 1978 appears to be necessary. It provides that the basic consideration for identifying an ineffective Govt. servant should be fitness/competence. The Minutes of the Review Committee proceedings (Annexure- 3) to the Supplementary Counter-Affidavit clearly indicates that the assessment of the service of the applicant in other areas is varied from "average" to 'good'.

11. In order to ascertain whether the recommendation of the Review Committee is objective and based on evidence, we directed the respondents to make A.C.R. Dossier of the applicant available for our perusal. The A.C.R. dossier of the applicant was made available to us in September, 1996. In the Minutes of Review Committee Meeting reference has been made to the remarks for the year 1976-77 about his late coming. The applicant was promoted to U. D. C. in the year 1980. Therefore, adverse remarks, if any, prior to his promotion lost their relevance. After his promotion

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to the post of U.D.C. remarks on his work and conduct have been recorded for the years 1981-82, 1982-83, 1983-84 and 1984-85. The remark in the year 1981-82 indicate that the performance of the applicant in all areas including punctuality & varies from 'Good' to 'Very Good'. The remarks for the year 1982-83 in all areas except punctuality are 'Good'. The only adverse remark is that punctuality is not good and he was advised to come office in time. The above remark in the opinion of the Reviewing Officer is not intended to be adverse but only advisory in nature. The remarks were communicated to the applicant with an advise to improve himself. The remarks for the year 1983-84 is that the punctuality was not good and that he was regular late comer. The remark for the year 1984-85 also suggest

that the performance of the applicant in all areas except punctuality was good. The remark in the Column 19 in respect with punctuality, however, it has been stated that same is inadequate. In the remarks for the year 1985-86, the assessment of the Reporting Officer in respect of the applicant is that his work and conduct in all areas including punctuality is good. In the general assessment of the Reporting Officer in the year 1985-86, the applicant has been assessed as 'Good' as against average rating for the year 1983-84.

12. From the above, it is thus clear that no adverse remarks have been recorded on the work and conduct of the applicant for the year 1981-82 and 1982-83

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He has, however, been described as regular late/ comer in the year 1983-84 and his punctuality has been found to be inadequate in the year 1984-85. There are thus only two adverse remarks that too regarding the punctuality of the applicant. As a matter of fact, the applicant has been described as regular late comer in the remarks for the year 1983-84. In terms of the instructions issued under O.M.No. 250/3/40/77-Estt (A) ~~22022~~ 1978, the basic consideration for declaring a Govt. servant as ineffective should be fitness/ competence. We have noticed from the remarks recorded in the ACR dossier of the applicant that no adverse remarks regarding his fitness or competence has been recorded by any of the Reporting Officer. The remarks recorded by the different Reporting Officer, however, indicate that work and conduct of the applicant in all areas except punctuality is good. Therefore, in our opinion, the two adverse remarks regarding late coming of the applicant alone are not sufficient to hold that the applicant has become ineffective. The recommendation of the Review Committee therefore, in our opinion, is not objective and based on material evidence.

13. The ~~law~~ law on the subject of the compulsory retirement has been laid down by the Hon'ble Supreme Court in Baikunth Nath Dass, Vs. Chief Medical Officer reported in 1992(21) A.T.C. 649. The relevant portion of the said decision is extracted below for convenience of reference :-

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"(1) 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) mala fide, 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. The circumstance by itself cannot be a basis for interference."

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14. In view of the decision in the case of Baikunth Nath Das' the Tribunal can interfere in a case where the decision to retire a Government servant pre-maturely is based on no evidence. We have already noted above that there is nothing either in the A.C.R. dossier of the applicant or in the recommendation of the review Committee to show that the applicant has become dead wood because of unfitness or incompetence so as to warrant the compulsory retirement.

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

16. In the result we allow this application and quash the order retiring the applicant compulsorily. The date of birth of the applicant is 11.7.1931. He has, therefore, completed 58 years of age on 31.7.1989, ^{and} hence cannot be reinstated now. He will, however, be treated to have been in service for all service benefits including pay and allowances for the intervening period from the date of his compulsory retirement till the date he attained the age of superannuation on 31.7.1989.

There will be no order as to costs.

J. K. Verma

Member-J

W. S.

Member-A

(Pandey)