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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Original Application No. 669 of 1988

Allahabad this the 26th day of April 1996

Hon'ble Dr. R.K. Saxena, Member { Jud. }
Hon'ble Mr. D.S. Baweja, Member { Admn. }

Jagbir Singh, S/o Sri Baboo Singh, A/a 55 years,
B.M. Mistri Grade I, Loco Shed, BC, N.E. Rly.,
Izatnagar, Bareilly, Res.-C/o Shanker Halwai,
Malookpur, Bareilly.

APPLICANT.

By Advocate Sri G.C. Gahrana

Versus.

1. Union of India through General Manager, N.E. Rly. Gorakhpur.
2. D.R.M., N.E. Railway, Izatnagar, Bareilly.
3. Senior Divisional Mech. Engineer, N.E. Railway, Izatnagar, Bareilly.

RESPONDENTS.

By Advocate Sri V.K. Goel.

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J)

This application has been moved under section 19 of the Administrative Tribunals Act, 1985 with the relief that the respondent no.2 and 3 be restrained from retiring the applicant, and ^{seeking} quashment of the order dated 17/3/88 (Annexure A-II).

2. The facts of the case given in the O.A. are that the applicant was initially appointed as Boiler Maker Khalasi and was promoted to the post of Boiler Maker Mistri Grade I. On 11.3.88, he was communicated with an adverse report (annexure-I) for the year ending 1987. He had represented against the said adverse remark but, before it could be decided the applicant was served with the notice dated 17/3/88 annexure-II of premature retirement. The case of the applicant is also to the effect that prior to 11.3.88, the applicant was never communicated with any adverse remark and thus, the action which was taken about the retirement of the applicant, was vindictive and the result of biased attitude of the authorities. The applicant had moved a representation annexure-III to reconsider the notice of retirement but with no result and, therefore, he approached the Tribunal seeking the relief mentioned above.

3. The respondents contested the case by filing counter-reply of Drupad Ram, Senior D.M.E. Izatnagar. It was admitted that the adverse entry for the year ending 31.3.87, was communicated to the applicant vide order dated 11.3.88. It is also averred that the applicant was served a charge-sheet

and faced inquiry on 15 occasions during the tenure of his service for his unsatisfactory work. In the last 6 years, he had earned adverse remarks ^{every year.} For these reasons, the review committee came to the conclusion that the applicant was not a fit person to be retained in service and accordingly he was served with the notice and ultimately prematurely retired. It is denied if the action has been taken because of any bias. It is, therefore, urged that O.A. is liable to be dismissed.

4. The applicant filed rejoinder, in which those very facts which were mentioned in the O.A., were reiterated. It is contended that he was served with no adverse entry ^{SW 2} then on 11/3/88. It is disclosed in para 4 of the rejoinder that if any departmental proceedings were going on, it would not mean that the employee was dishonest. According to him, there was vast difference between the unsatisfactory work and dishonesty ¹.

5. We have heard the learned counsel for the parties and have perused the record.

6. The main argument of the learned counsel for the applicant in this case is, that he was given adverse remark only once for the year ending March, 1987. This fact has been contradicted in the counter-reply where it was specifically mentioned that the applicant was given adverse remarks ^{every year} in the last 6 years. This fact has not been specifically challenged by the applicant. What he stated in rejoinder, is that if disciplinary proceedings were continuing, it would not mean that the applicant was dishonest. What appears from this fact is that the applicant had been facing several departmental inquiries. The averment made by the parties also go to establish that the applicant had been given adverse remarks in the last 6 years.

7. Continuous earning of adverse remarks may be a ground for retiring the employee compulsorily. The learned counsel for the applicant placed reliance on the decision 'Baidyanath Mahapatra Vs. State of Orissa and another 1990 S.C.C. (L&S) 38', in which the order of compulsory retirement on the basis of adverse remarks which were belatedly

written and communicated, was not found proper and sustainable in law. In another case of 'Baikuntha Nath Das and another Vs. Chief District Medical Officer Baripada and another (1992) 21 A.T.C. 649', Their Lordships of the Supreme Court considered the question of compulsory retirement on the basis of uncommunicated adverse remarks and held that the decision of retirement could not be challenged for non-communication of the adverse remarks. This decision is of three Judges Bench whereas the decision of Baidya Nath Mahapatra, was given by two Judges Bench. Their Lordships had observed in Baikuntha Nath Das's case that principles of natural justice had no place in the context of an order of compulsory retirement. It was further held that the High Court or the Supreme Court would not examine the matter as an appellate court, They may interfere if they are satisfied that the order is passed (a) malafide (b) that it was based on no evidence, or (c) that it was arbitrary. In this way, what was laid down in Baidya Nath Mahapatra's case was not followed in the subsequent decision of Baikunth Nath Das's case. In another case 'State of U.P. & Ors. Vs. Bihari Lal 1995 S.L.J. 110', Their Lordships went even to the extent that compulsory retirement may be ordered even on bad reputation of an employee. From these

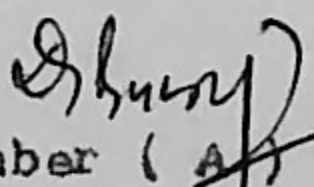
decisions, it comes ^{out} that even if the adverse entries were not communicated to the employee and the order of retiring him compulsorily was passed on the basis of those adverse entries, the order of compulsory retirement shall not be invalidated. In the present case, it is admitted fact that an adverse entry was given to the applicant ending 31.3.87. The respondents also came forward to disclose that the applicant had earned adverse entries in the past ^{in all the} 6 years. Thus, his record of service at the time when it was reviewed by the committee, was not good. Accordingly, the order of compulsorily retiring the applicant could be passed.

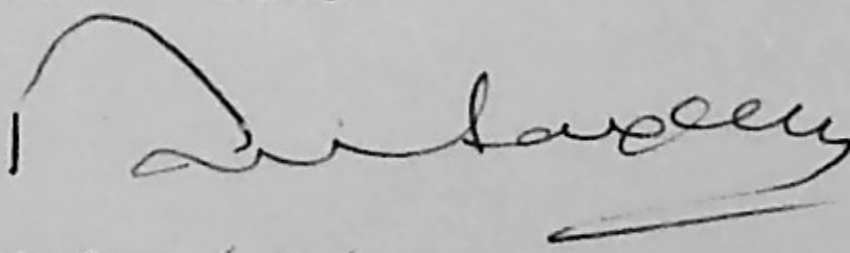
8. The learned counsel for the applicant also placed reliance on the decisions of 'D.N. Singh Dev Vs. Chief Secretary to the Govt. of Orissa and Others 1987 (V) S.L.R. 307' and (Surinderjit Singh Vs. State of Punjab 1986(II) S.L.J. 287' (decided by Punjab High Court) to emphasise the point that soon after the adverse entry was communicated to the applicant, the order of retiring him compulsorily should not have been passed. In our opinion, when the law has been settled [&] on the point in Baikunth Nath Das's case that the order of compulsory retirement could be passed on uncommunicated entry, non-disposal

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of the representation or there being short interval in the communication of the adverse entry and serving of the notice of compulsory retirement loses its significance. Thus, we do not find any force in the decision of the two cases relied upon by the learned counsel for the applicant.

9. On the scrutiny of the decisions of different Courts as made above, We find that the order of the compulsory retirement communicated to the applicant through annexure-II, cannot be questioned on the point of legality. Factually also, the decision taken by the Review Committee finds strength from the record. The result is that the O.A. is not maintainable and it is dismissed. No order as to costs.


Member (A)


Member (J)

/M.M./