

Reserved Judgement

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: ~~22.2.5.155~~

Original Application No: 1005 of 1988

Prabhoo Narayan Lal (CTTI),
S/O Late Hari Narain Lal,
At present working as C.T.C. N.E.R.
Farrukhabad.

..... Applicant.

Versus

The Union of India & Ors.

..... Respondents.

C O R A M

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

O R D E R

BY Hon'ble Mr. T.L.Verma, Member-J

The subject matter of challenge in this O.A. is order dated 14.6.1988 (Annexure-I) whereby the applicant has been compulsorily retired from service w.e.f. 14.9.1988.

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2. The applicant began his career as T.N.C. under the North Eastern Railway on 04.12.57. He was promoted as CTTI/C.T.C. in 1980. At the relevant time, he was working as C.T.C. Farrukhabad. By order dated 14.6.1988, Commercial Superintendent, Izzatnagar, retired the applicant from service w.e.f. 14.9.1988 on his completing 30 years of service. The applicant submitted an appeal to

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the Senior Divisional Commercial Superintendent against the order dated 14.6.1988 compulsorily retiring him from service (Annexure-3). No order, it is stated, has been passed by the Sr. Divisional Commercial Superintendent on the appeal filed by the applicant.

3. The impugned order of compulsory retirement has been assailed on the ground of being malafide, arbitrary and not based on evidence. Hence, this application for quashing notice/ order dated 14.6.1988 and for issuing a direction to treat the applicant in continuous service without break and entitle salary and allowance till 31.3.1992, the date on which he would have superannuated on attaining the age of 50 years in the normal course.

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4. The respondents have resisted the claim of the applicant. It has been averred that the applicant has been ordered to retire prematurely in accordance with law, rules and guidelines and that the order has been passed after considering the entire record of service of the applicant and as such the impugned order cannot be subjected to judicial scrutiny.

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5. We have heard the learned counsel for the parties and perused the record. The power to retire the applicant has been exercised by the Competent Authority under Rule 2046 of the Indian Railway Establishment Code Vol. II 1973 Edition and Rule 620 of the Manual of Railway Pension Rules 1950. The relevant portion of para 2046 of the Code is extracted below for convenience of reference:-

- (h) Notwithstanding anything contained in this rule, the appointing authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any railway servant giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice-
- (i) if he is in Class I or Class II service or post and had entered Government service before attaining the age of thirty-five years, after he has attained the age of fifty years.
- (ii) in any other case after he has attained the age of fifty-five years.

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Rule 620 of the Manual of Railway

Pension Rules 1950 reads as follows:-

- (i) A Railway servant may retire from service at any time after completing 30 years' qualifying service, provided that he shall give in this behalf a notice in writing to the appropriate authority, at least three months before the date on which he wishes to retire.

Note:-In the case of a Railway servant under suspension, the exercise of the right to retire on a retiring pension on completion of 30 years qualifying service shall be subject to the prior approval of the authority which has powers to make substantive appointment to the post or service from which the Railway servant seeks retirement.

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6. A bare perusal of the provisions extracted above, clearly indicates that the competent authority has absolute power to retire Group 'C' railway servant on being specified that doing so was in public interest on his completing 30 years of service by giving 3 months notice ~~in writing~~ or 3 months pay and allowances in lieu of notice. The learned counsel for the applicant has urged that the applicant was served with 2 self-contradictory notices; one is dated 14.6.88 stating that he was to retire compulsorily w.e.f. 14.9.1988 on his completing 30 years of service. The other notice dated 4.7.1988, however, states that the applicant was to retire w.e.f. 14.9.88 on his completing 58 years of age. The two self-contradictory notices, it was submitted clearly indicate are against the rules and regulations framed in that behalf and as such are bad in the eyes of law. We have examined the 2 notices referred to by the learned counsel for the applicant and we find that there is no substance in the said argument. Notice dated 14.6.88(Annexure-I) has been issued under the provisions of para 2046 (h) of the Indian Railway Establishment Code and Rule 620 of Manual of Railway Pension Rules, 1950 and clearly mentions that the applicant was to retire w.e.f. the Forenoon of 14.9.88 on his completing 30 years of service. Notice dated 4.7.88 is only an information to such of those who were retiring on completion of 58 years of age. The name of the applicant has also been included in the

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said list. From the perusal of the notice, it would appear, the date of his retirement of the applicant has been shown as Forenoon of 14.9.1988. The date of his retirement corresponds to the date given in notice (Annexure-I) issued under the provisions of Rule 2046(h) of the Indian Railway Establishment Code and Rule 620 of Manual of Railway Pension Rules. The inclusion of the name of the applicant in the list which contains the names of only such persons who were superannuated on attaining the age of 58 years appears to be a clerical mistake only and as such does not vitiate the notice (Annexure A-I).

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7. It was next argued that the respondents have passed order dated 14.6.88 against the spirit of the instructions in the Memorandum No. 25013/14/77 Estt. issued by the Ministry of Home Affairs on 5th January, 1978 for being followed in the matter of passing order of premature retirement. According to the guidelines given by the Ministry of Home Affairs, a Government servant can be retired if his integrity is doubtful or that he is found to be ineffective. The learned counsel for the applicant submitted that no adverse remark has been recorded in the ACRs of the applicant at any stage of his service. It was submitted that had there been any adverse remark on the performance of the applicant, he would not have been promoted to the highest grade

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of Class III post. The applicant was promoted as CTI in 1980. According to the learned counsel for the applicant, no adverse entry on the performance of the applicant has been made ~~on the~~ ~~xxxx and conduct of the applicant~~ after his promotion as CTI and as such there was absolutely no material to support the order retiring the applicant compulsorily. 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 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

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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.

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 be a haunt on 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

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opinion that the government officer needs to be compulsorily retired from service. Therefore, the entire service record more particularly 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. From the decisions of the Supreme Court as quoted above, it is clear that the Government can, in public interest, retire a Government servant compulsorily who has become dead wood to augment efficiency or an employee whose integrity is doubtful.

10. The question, therefore, that falls for consideration is whether the respondents, while exercising the power of compulsorily retiring the applicant have exercised the 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. For ascertaining whether the exercise of power by the respondents to compulsorily retire the applicant was in public interest or falls in the category of arbitrary exercise of power, perusal of the report of the Review Committee and the ACR dossier of the applicant was essential. We, therefore, directed Shri G.P. Agarwal, learned counsel for the respondents to make the service record and also

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the proceedings of the Review Committee available for our perusal within 2 weeks by order dated 19.12.1994 while reserving the judgement. In spite of reminders to Shri G.P. Agarwal, the proceedings of the Review Committee as well as service record of the applicant has not been made available to us for our perusal. The Counter Affidavit filed on behalf of the respondents also nowhere states that the applicant had earned adverse remarks as to his efficiency or integrity. The service record/character roll/confidential reports would have, ~~been~~, in our opinion, furnished the back drop material ~~for~~ considered ~~by~~ by the Government/~~the~~ the review Committee or the appropriate authority for arriving at a decision that the retirement of the applicant was in public interest. Perusal of the proceedings of the Review Committee and ACR dossier of the applicant was, ^{thus,} necessary for our satisfaction that the respondents have exercised their power to retire the applicant compulsorily in public interest. We are fortified in our aforesaid view by the decision of the Supreme Court in R.S. Dhall Vs. State of Haryana & Ors. reported in 1994 (27) Administrative Tribunal Cases page 572, In the aforesaid case, the Punjab and Haryana High Court dismissed the writ petition filed by the appellant challenging the order compulsorily retiring him. The Punjab & Haryana High Court ~~has~~ passed the aforesaid order without perusing the ACR dossier of the applicant and the proceedings

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of the Review Committee. The case, was remitted to the High Court for deciding the case afresh after perusing the relevant record.

11. The failure on the part of the respondents to make the ACR dossier of the applicant and the proceedings of the Review Committee for our perusal inspite of direction given, leaves us with no alternative *but to draw* an adverse inference that, had the record been produced, the same would have gone against the respondents. On the basis of the slender material before us, we are unable to hold that the applicant had become dead wood or that his integrity was doubtful as to warrant his compulsory retirement *to* augment the efficiency of the office or to maintain integrity in public service.

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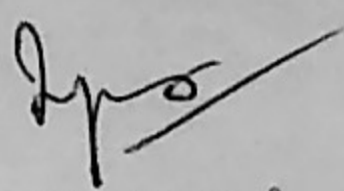
12. For the reasons stated above, we are satisfied ~~that~~ the impugned order is based on no evidence and that the same is arbitrary in the sense that no reasonable person would ~~form~~ the required opinion on the given material and as such, it cannot be sustained.

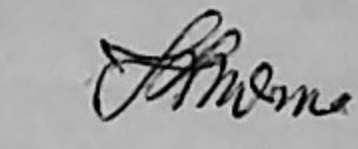
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13. In the result, we allow this application and quash the order retiring the applicant compulsorily with consequential benefits. There will be no order as to costs.


Member-A


Member-J

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