

CENTRAL ADMINISTRATIVE TRIBUNAL

ALIAHABAD BENCH

Original Application No. 1395 of 1993

D.C. Rajput .... Petitioner

Versus

Union of India and Ors .... Respondents

CORAM:

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

HON'BLE MR. S. DAS GUPTA, MEMBER(A)

( By Hon. Mr. Justice R.K. Varma, V.C. )

By this petition filed Under Section 19 of the Administrative Tribunals Act 1985 the petitioner has sought quashing of the order dated 28.6.93 (Annexure A-1) whereby the petitioner has been ordered to be compulsorily retired from services on attaining the age of 55 years on 30.9.93.

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2. The facts giving rise to this petition briefly stated are as follows:-

The petitioner entered into service on 19.4.63 as L.D.C in the office of Garrison Engineer, Agra. He was promoted as Upper Division Clerk against <sup>a</sup> the post under the Garrison Engineer Babina, but since the posting at Babina did not suit the petitioner he preferred to forego his promotion. In the year 1983 the petitioner was again given promotion on the post of Upper Division Clerk at Mau but again the petitioner preferred to forego his promotion. According to the averments in the Counter filed by the Respondents the said promotions were given

to the petitioner because there were no adverse entries in the last five years.

3. The Respondents have alleged that in the years 1989 and 1990 the petitioner was given adverse remarks in his ACRs to the effect that he takes less interest in work and requires constant supervision to ensure completion of office work. The petitioner was given one time promotion from LDC to UDC w.e.f. 1.4.91 under the scheme for Career Advancement of Group 'C' and Group 'D' employees. It is also stated in the Counter that the case of retention beyond 55 years was recommended by the Formations where the petitioner served i.e. Garrison Engineer Kheria and Garrison Engineer, Agra. But the Review Committee <sup>at the</sup> ~~acted~~ Chief Engineer Command level did not recommend the petitioner's retention beyond 55 years considering the petitioner's performance during the entire period. As such the petitioner was given notice of premature retirement w.e.f. 30.9.93 against which the petitioner made representation on 6.7.93 to the Engineer-in-Chief Branch, but the same has been rejected by the Competent Authority and consequently the impugned order dated 28.6.93 (Annexure A-1) compulsorily retiring the petitioner w.e.f. 30.6.93 <sup>has been passed.</sup>

4. The learned counsel for the petitioner has submitted that as per the Counter filed by the respondents in answer to the petition, there is no averment of any adverse entry in the ACRs of the petitioner after 1971 and upto 1988 and the respondents have alleged that in the years 1989 and 1990 the petitioner was given adverse remarks in ACRs to the effect

that he takes less interest in work and requires constant supervision to ensure ~~of~~ completion of office work and these adverse remarks appears to be <sup>the</sup> principal material for compulsorily retiring the petitioner. It has been contended that against the said adverse remarks the petitioner had made representation on 12.3.91 but the said representation has not been decided and yet the respondents have apparently considered the said adverse remarks for ordering compulsory retirement of the petitioner.

5. It has also been contended on behalf of the petitioner that the adverse remarks in the petitioner's ACRs of 1989 and 1990 lose their significance and stand superseded by reason of the fact that the petitioner was given promotion subsequently from the post of LDC held by him to the post of UDC w.e.f. 1.4.91 under the Scheme for Career Advancement of Group 'C' and Group 'D' employees. It has been pointed out that it is clear from Para 4(b) of the letter dated 28.1.92 (Annexure E to the Counter filed by the respondents) issued to the Chief Engineers of various commands on the subject of Career Advancement of Group 'C' and Group 'D' employees that the promotion under the scheme was to be allowed after following due process of promotion with reference to Seniority-cum-fitness. As such, the petitioner <sup>was</sup> was promoted under the scheme from LDC to UDC w.e.f. 1.4.91 on seniority cum-fitness basis. Consequently, it is urged that the adverse ACRs of 1989 and 1990 lose significance and stand supersede and the same cannot form basis any more for compulsorily

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retiring the petitioner subsequently w.e.f. 30.9.93 as has been ordered by the respondents vide the impugned order dated 28.6.93 (Annexure A-1).

6. Attention has been invited to the copy of E-In-C's branch letter dated 19.9.91 addressed to all commands G.E.S etc, which has been filed as an Annexure with the Rejoinder of the petitioner. <sup>lw</sup> This letter is on the subject of strengthening of administration; premature retirement of Govt. servants Group 'C' and Group 'D' and provides in its Para 4 retention criteria for conducting review for all group 'C' and 'D' employees on attaining the age of 55 years or 30 years qualifying service. As per clause(ii) of Para 4(b) of the letter it is provided that no employee should ordinarily be retired if his services during the preceding five years or in the present grade (in case he has been promoted within last five years) has been found satisfactory.

7. It has been submitted that as the petitioner was promoted from LDC to UDC w.e.f. 1.4.91 and there was nothing found unsatisfactory against him in his service in the present grade of UDC, the petitioner was not liable to be retired according to the retention criteria provided in clause(ii) of Para 4(b) of the letter aforesaid.

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8. The learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in 'BrijMohan Singh Chehra Vs. State of Punjab (AIR 1987 Supreme Court 948) in support of his submission that adverse entries prior to his promotion w.e.f. 1.4.91 cannot be taken into consideration while forming opinion to retire him prematurely

since the adverse entries lose their significance

after promotion of the employee and also that adverse remarks against which representation is pending cannot be considered.

9. The learned counsel appearing on behalf of the respondents has on the other hand cited a decision of the Supreme Court in 'Baikunth Nath Das Vs. Chief District Medical Officer, Beripada (A.I.R 1992 Supreme Court 1020). In support of his submission that the order of compulsory retirement has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily and that the order is passed on the subjective satisfaction of the government or the Review Committee and that the Review Committee has to consider the entire record of service before taking a decision in the matter, of course attaching more importance to record of later years and ~~in~~ that in passing the order of compulsory retirement, the uncommunicated adverse remarks can also be considered since principles of natural justice do not apply to an order of compulsory retirement.

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10. Learned counsel for the respondents has also cited the case of 'Post and Telegraph Board and Ors Vs. C.S.N. Murthy ( 1993 Supreme Court Cases (L&S) 710) to submit that compulsory retirement is based on subjective satisfaction of the Reviewing Authority and was not ~~open~~ to court's interference in absence of any material showing malafides, perversity, arbitrariness or unreasonableness.

11. We find that in the aforesaid case of 'Baikunth Nath Das (Supra)', it has also been held 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 on merit (selection) and not upon seniority.

12. As has been pointed out by the learned counsel for the petitioner, the petitioner was promoted notwithstanding the adverse remarks of 1989 and 1990 to the post of UDC in 1991 on 1.4.91 on the basis of seniority-cum-fitness and as such the adverse remarks lose their sting and significance.

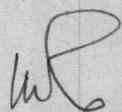
13. It has further been pointed out that in the view of the G.E. Agra, under whom the petitioner was working the petitioner was fit to be retained in service and as such the Garrison Engineer, Agra in his communication dated 29.10.91 addressed to H.Q. C.W.E, Agra (Annexure 8 to the petition) had also recommended the case of the petitioner for retention of service. The petitioner has also averred that on appeal submitted by him against his premature retirement comments were asked and the Commandant Works Engineer was of the opinion that the petitioner should be retained beyond 55 years of age and this recommendation has been forwarded to Chief Engineer, Lucknow Zone, Lucknow on 21.8.93. To this averment there is no specific denial in the Counter of the respondents.

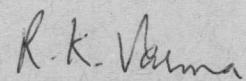
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14. Having heard learned counsel for the parties and in view of the discussion aforesaid, we are of the opinion

that the adverse entries in the ACRs of 1989 and 1990 pertaining to the petitioner ~~had been~~ <sup>stood</sup> superseded by reason of the petitioner's promotion as UDC and as such there was no adverse material in the service record of the petitioner after the year 1971 till date for being considered for his premature retirement. Any adverse entry prior to 1971 being stale could not by itself have formed the basis of compulsory retirement on a reasonable consideration. In this view of the matter, <sup>as also having regard to the selection criteria aforesaid,</sup> we hold that the impugned order of compulsory retirement dated 28.6.93 (Annexure A-1) is arbitrary, unreasonable and is liable to be quashed being not sustainable in law. Accordingly, it is hereby quashed. The petitioner shall be treated to be continuing in service with the <sup>and</sup> ~~and~~ entitlement of salary, allowance as per rules and shall be taken back on duty within a fortnight of the communication of this order.

15. There shall, however, be no order as to costs.

  
Member (A)

  
R.K. Varma  
Vice Chairman

Dated: Jan: 28<sup>th</sup>, 1994

(Uv)