

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 29th day of July 1998.

Original Application no. 315 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member
Hon'ble Mr. S.L. Jain, Judicial Member

Ishwari Prasad, S/o Basant Ram working as Assistant
Post Master, at Head Post Office, Bareilly, r/o
Mohalla 18-phaal toonganj, Bareilly.

... Applicant

C/A Shri R.C. Sinha

Versus

1. Union of India through Director Postal Services,
Bareilly.
2. Senior Post Master, Head Post Office, Bareilly.
3. Senior Superintendent of Post Office, Bareilly Division
Bareilly.

... Respondents.

C/R Km. Sadhana Srivastava.

ORDER

Hon'ble Mr. S. Dayal Member-A.

This is an application under section 19 of the
Administrative Tribunals Act, 1985.

2. The applicant has filed this application for
seeking the following reliefs:-

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i. An order of the Tribunal setting aside impugned order at Annexure A-1 dated 20.09.93.

ii. A direction to the Respondents to give salary and all the consequential benefits to the applicant.

3. The facts mentioned by the applicant in his O.A. are that he was appointed as Postman on 01.08.62, as clerk on 01.11.66 and as a confirmed clerk on 01.11.75. He has mentioned his date of birth as 15.03.40. He was promoted as Assistant Post Master on 27.02.84 in lower selection grade under time bound scheme. He claims to have been awarded no adverse entry except in 1978. The applicant was punished with stoppage of one increment for three years on 11.06.87 and the applicant filed an appeal which is still under consideration. In 1988 the applicant was charged with not submitting the account books during a period when he was on medical leave. His appeal was dismissed as time barred. No adverse entry for 1988 was communicated to him nor was such an entry given. The applicant was charged in 1989 for submitting a bogus travelling allowance bill and was reduced to a lower post but the order of punishment was set aside by the Post Master General. The applicant has alleged that his order of compulsory retirement was filed because of collusion between one Shri Tilak Ram Kocher who is trying to evict the applicant from the applicant's residential premises and Director of Postal Services, who is a neighbour of Shri Tilak Ram. He claims that his case is not covered by FR 56 J. The applicant was served with order dated 20.09.93 by which he was informed that his case was being reviewed and he may submit his representation. The applicant asked for CRs

of last 10 years on 17.11.93 but the respondents refused to give him copies or show CRs to the applicant by their letter dated 20.12.93. Although review in pursuance of order dated 20.09.93 is still pending, the applicant is not allowed to work from 29.01.94 and is deemed to have retired. The applicant has also claimed that order of compulsory retirement dated 20.07.93 was sub-judice before the Tribunal and hence order of retirement dated 20.09.93 could not have been passed.

4. The arguments of Shri R.C. Sinha learned counsel for the applicant and Km. Sadhana Srivastava, learned counsel for the respondents have been heard. Pleadings on record have been taken into account.

5. Learned counsel for the respondents has cited the case law and authorities to stress on the limited scope of judicial review in cases of compulsory retirement. She has cited State of Orissa & Others Vs. Ram Chandra Das, 1996 SCC (L&S) 1169, the Tribunal had set aside an order of compulsory retirement of an Assistant Conservator of Forests on the ground that record prior to promotion/crossing of efficiency Bar should not have been taken into consideration and that overall consideration of the entire record was not done. The apex court held that the record prior to promotion would form a part of overall record and has to be taken into consideration and if after consideration of overall record, continuance is not found to be in public interest, the official could be compulsorily retired, Secondly, the Tribunal had seen the overall record from 1964-65 to 1981-82 and this record was placed before and duly considered by the Review Committee. Hence the appeal

against the order of this Tribunal was allowed and the compulsory retirement was upheld.

6. Another case cited by learned counsel for the respondents is I.K. Mishra vs. Union Of India & Others, 1997 SCC (L&S) 1654, in which following the principles laid down by the apex court in Baikuntha Nath Das Vs Chief Distt Medical Officer, 1993 SCC (L&S) 521 were cited and followed. It was held by the apex court in that case that:-

i. An order of compulsory retirement is not a punishment and implies no stigma or any suggestion of misbehaviour.

ii. The judicial scrutiny by High Court and Apex Court would not be as an appellate court but their interference would ^{be} justified only if an order is malafide or based on no evidence or is arbitrary.

iii. The entire record should be examined attaching more importance to later years and less importance to record before promotion especially if promotion is based on merit.

7. Certain contentions made by the applicant's counsel can be dealt with in the light of the above cases decided by the apex court. The first of these is that the impugned order is not a speaking order as it gives no reasons for compulsory retirement. In the second case cited above, it has been laid down that compulsory retirement is not a punishment and carries no stigma or suggestion of misbehaviour. Therefore, the contention that the order should be set aside ^{no reason} can not be accepted as justifying in order of because it is non speaking and gives compulsory retirement.

8. Another contention of the learned counsel for the applicant that the order was malafide because it was passed at the instance of one Shri Tilak Raj Kochar who was a neighbour of the Director of Postal Services, a member of

Review Committee can also not be allowed to succeed as the Director, Postal Services, Bareilly has not been impleaded by name as a respondent and suggestion of his complicity based on mere suspicious can not be accepted.

9. The applicant has also claimed that there is no adverse entry in his confidential Rolls or if such an entry exists, it has never been communicated. The respondents on the other hand have mentioned in their counter reply that the applicant was given ^{and} communicated adverse entries in 1977, 1978 and 1988. The respondents have also annexed a list of punishments communicated to him which shows that in 1964-65, 1966-67, 1971-72, 1973-74, 1976-77, 1980-81, 1982-83, 1984-85, 1985-86, 1986-87 and 1987-88 a number of communications and punishments orders were passed which reflect his performance in very adverse light. The applicant has tried to show that the list has unnecessarily been made longer, that some of his appeals were treated as time barred and some representations are pending. However, the law laid down by the apex court is clear that if there is some evidence of poor performance, the case goes out of the ken of judicial review .

10. The applicant has claimed that order under 56 J Fundamental Rules was not applicable to him and that order dated 20.09.93 has been passed during the pendency of the matter before the Tribunal when stay order was operating in O.A. 1546/93 which is still pending before the Tribunal challenging order dated 20.07.93. The applicant has mentioned in paragraph 4.11 of his O.A. that interim order passed in 1546/93 on 14.10.93 was that after the retirement of the applicant no one was to be appointed to his post during the pendency of the stay order. It is stated that the interim

order was extended on 27.10.93 till the disposal of the O.A. The learned counsel for the applicant did not make any request for hearing of this O.A. alongwith O.A. 1546/93. Therefore, O.A. 1546/93 is not before us. No extension of stay was made by the Tribunal in O.A. 1546/93 till the disposal of the O.A. but the extension was given till the next date. There was no stay operating against the retirement of the applicant under rule 56 J of Fundamental Rules or Rule 48 of CCS (Pension) Rules on 27.10.93 and there was no stay existing on 20.09.93. The applicant has not come out clean with facts insomuch as he has not annexed order dated 20.09.93 of cancellation of order of retirement dated 09.07.93 and the order of retirement of the applicant under Rule 48 CCS (Pension) Rules dated 20.09.93 but has photocopied order dated 09.07.93 under notice dated 20.09.93 in Annexure 1 of his O.A. Since in this O.A. what is challenged is order dated 20.09.93 and order dated 09.07.93 has been challenged in O.A. 1546/93, I do not consider reference to orders passed in O.A. 1546/93 as relevant in this case. Therefore, this argument of the applicant fails.

11. The last argument advanced by the learned counsel for the applicant is that the compulsory retirement has not been done exactly on completion of 30 years of service but after about eighteen months of completion of thirty years of service. It is the contention of the learned counsel for the applicant that such an order can be passed only three months prior to completion of 30 years of service to enable the respondents to give three months notice but it can not be passed after that period. This contention of the applicant is not acceptable because Rule 48 of CCS (Pension)

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Rule clearly provides that the appointing authority is authorised to retire a government servant in public interest at "any time after a government servant has completed thirty years of qualifying service."

12. The application is, therefore, dismissed as lacking in merits.

13. There shall be no order as to costs.

Sd/-
Member-J

Sd/-
Member-A

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