

Final order released -
(Jud) yes

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 447 OF 1987
~~T.A. No.~~

DATE OF DECISION 28-6-1991.

D.C. Limbachia, Petitioner

Mr. Shailesh Brahmbhatt, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Jayant Patel, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S. Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal. *no*

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Shri D.C. Limbachia,
Type C/ Block No. 1/6,
P & T Colony,
Jodhpur Char Rasta,
Ahmedabad - 380 015.

.... Applicant.

(Advocate: Mr. Shailesh Brahmbhatt)

Versus.

1. Union of India
(Notice to be served through
the Secretary, Ministry of
Communications,
Sanchar Bhavan, New Delhi.)
2. The Director General (Telecom)
Sanchar Bhavan,
New Delhi.
3. General Manager (Telecom District)
'Ram Nivas', Khanpur,
Ahmedabad.

..... Respondents.

(Advocate: Mr. Jayant Patel)

J U D G M E N TO.A.No. 447 OF 1987

Date: 28-6-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant while posted as Assistant Engineer (Co-ordination) in the Department of Telecommunications was, by order dated 22.5.1987 signed by Mr. D.K. Sangal, Director General (Telecom) exercising his powers conferred by Rule 56 (J)(i) of the Fundamental Rules, retired on attaining the age of 50 years on 18.3.1987 with immediate effect. The applicant submitted representation dated 7.7.1987 to the Secretary, Ministry of Telecommunications and Chairman Telecommunication Board, New Delhi against the impugned order. Alleging that he received no reply to this representation, the applicant has questioned the impugned order by filing this application under section 19 of the Administrative Tribunals Act, 1985 on 11.9.1987.

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2. The self-referential information in his application consists of his starting service as Telephone Operator on 1.7.1956, earning his promotion in August 1967 as Junior Engineer, in September 1979 as Sub Divisional Officer Telegraphs, being regularly ordered to the cadre of TES Group B with effect from 17.8.1983 and as Assistant Engineer (Planning) with effect from 17.10.1983. His say is that in his whole service career of about 30 years, he received adverse remarks only twice, once dated 11.7.1983 for the year 1982-83 and the second dated 10.5.1985 for the year 1984-85. He represented against the first adverse remarks by representation dated 1.8.1983 which is still pending. His representation against the second adverse remarks contained in communication dated 10.5.1985 resulted in expunction of the remarks by letter dated 26.11.85 of the Deputy General Manager (Administration) Ahmedabad Telephones. The substance of his pleas against the impugned order is that when one of the only two adverse remarks he received in his service career came to be expunged and in the other his representation remains to be disposed of, none of the two adverse remarks can be taken into consideration to prematurely retire him from service especially when he earned promotions regularly and his promotion from 17.10.1983 in effect wiped out the first adverse remarks. This left no adverse remarks surviving against the applicant to be taken into consideration for premature retirement. However, the applicant was issued chargesheet dated 10.7.1986 for disciplinary action for violation of Rule 3(i)(ii) of CCS(Conduct) Rules, 1964. An Enquiry Officer was appointed by order dated 6.8.1986. Before the enquiry could make any further progress, came the impugned order. As the charge had not been proved, the same also cannot be taken into consideration to

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issue the impugned order. The applicant has alleged that the impugned order seems to have been based on the chargesheet dated 10.7.86. His submission also is that he should at least have been given opportunity to continue in service in Group C post or in services in a rank he substantively belonged to. As he was in a Group B post, he submits that the respondents ought to have intimated to him their intention of retiring him and asked him whether he would be interested in continuing in service in Group C post. No such intimation was sent to him. As exercise of power under Rule 56(J)(i) is subject to this provision of the Rules and as this provision was not complied with, the impugned order is challenged on this ground also. It is alleged that the order is arbitrary, liable to be quashed and set aside.

3. Assistant General Manager(ADMN) C/o. General Manager, Ahmedabad Telecom District filed "written submissions" dated 19.6.1990 on behalf of the respondents. The preamble to the said "written submissions" says that the signatory verified and states in reply to the application. The signatory has claimed competence to file the reply. He has averred that appeal against the order would lie to the appellate authority and as the remedy has not been exhausted, the application has to be rejected. However, the reply also admits that the applicant had preferred appeal dated 7.7.1987^{which} was rejected as being time barred. The date of the order by which it was so rejected is not disclosed in the reply. We should observe here that the applicant, as stated earlier, has alleged that his representation elicited no reply. Even if the respondents considered the representation time barred, we are of the view that a reply to the applicant should have been sent accordingly.

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However, we leave this matter with this observation only. The reply further states that the review committee at the highest level had reviewed the case of the applicant which resulted in the issue of the impugned order. It is further stated that the applicant had received adverse remarks. There is no reply to the allegation that the adverse remarks had either been expunged or not disposed of or did not survive and therefore could not be relied upon for issue of the impugned order. Reply denies that chargesheet dated 10.7.1986 is at the basis of the premature retirement. The reply is silent about the material taken into consideration by the review committee for deciding that the applicant deserves to be compulsorily retired.

4. We heard the learned counsel for both parties. At the hearing learned counsel Mr. Brahmhatt for the applicant relying on Baldev Raj Chadha V/s. Union of India, (1980) 4 S.C.C. 321 argued that the onus is on administration to disclose and prove the material to support the order and that record prior to five years cannot be taken into consideration by the administration for issue of such an order. Learned counsel Mr. Patel for the respondents submitted, relying on provision of O.M. dated 15.1.78, that entire service record and not of proceeding five years only can be considered. Besides the above precedent, the applicant also relies on Supreme Court judgment in Brij Mohan Singh Chopra V/s. State of Punjab, AIR 1987 SC 948 for his submission that premature retirement should not be ordered if the record of service during the last five years has been good.

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5. The Supreme Court, in Baldev Raj Chadha case, supra, had observed against administration relying on obsolete and therefore less relevant old service record ignoring the good service record of recent years relevant for decision as follows:

"One wonders how an officer whose continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for five years immediately before the compulsory retirement, could be cashiered on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms. A short cut may often be a wrong cut. The order of compulsory retirement fails because vital material, relevant to the decision, has been ignored and obsolete material, less relevant to the decision, has influenced the decision. Any order which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts bearing on the decision is bad in law. Likewise, any action which irrationally digs up obsolete circumstances and obsessively reaches a decision based thereon, cannot be sustained. Legality depends on regard of the totality of material facts viewed in a holistic perspective. For these reasons, the order challenged is obviously bad and we quash it."

Similar view was taken by the Supreme Court in Brij Mohan Singh Chopra case, supra. Presuming that the respondents can take into consideration the whole of the service record of the applicant, on the same service record regular promotions came to be given to the applicant, the last being with effect from 17.10.83. It is not the case of the respondents that the applicant came to be given regular promotions in ignorance of any past adverse remarks. The applicant has shown - and rightly in our view - that no adverse remarks survive

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and therefore none existed for the respondent to take into consideration. This contention of the applicant has not been disputed by the respondents in their written reply or oral submissions. It is not sufficient for respondents and counsel to say that respondents are entitled to rely upon the service record of the applicant for all the years of service unless it is also shown that it contains legally surviving adverse remarks.

6. Seeing the file of the Department of the review cases, adverse remarks in 1983-84 and integrity column left blank because of CBI enquiry pending and in 1984-85 integrity column left blank because of CBI enquiry pending seem to be the only material which weighed. About the 1983-84 adverse remarks, the applicant has shown that adverse remarks communication dated 10.5.1985 (Annexure A-4) contained the following adverse remarks:-

"PART IV REMARKS OF THE REVIEW OFFICER

- | | |
|---|---|
| 5. Aptitude and potentials of the Officer reported upon and suffestation for possible lines of growth and development | : The Officer has not shown any sign of improvement inspite of persuasion. Many complaints have received during his duty period." |
|---|---|

These adverse remarks were expunged by order dated 26.11.1985 issued by Deputy General Manager (Admn.) Ahmedabad Telephones communicating the order of the General Manager who decided to expunge. We notice that the order of expunction of adverse remarks of 1983-84 had already been issued on 26.11.85 before the consideration of the applicant's case for compulsory retirement. The processing of the case of the applicant in the second half of 1986 and early 1987 failed to take note of the fact that the adverse remarks had been expunged and therefore ceased to exist.

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The first adverse remarks dated 11.7.83 represented against by the applicant could not be taken into consideration for two reasons, the first being that the representation remained pending and secondly because he was promoted with effect from 17.10.83, after the remarks. We therefore hold that no such adverse remarks as could be validly considered for issue of the impugned order are shown to have existed.

7. Coming to the factor of integrity, the question is whether leaving the integrity column blank can be construed as doubtful integrity. The record of the proceedings of the applicant's case shown to us does not specifically enlighten us about it. But it is clear that the column of integrity having been left blank also weighed with the respondents. The Govt. of India M.H.A. OM No. 51/4/64-Estt(A) dated 21.6.1965 contains the following instructions on the subject of filling up the column relating to integrity :

- "(i) If the officer's integrity is beyond doubt, it may be so stated.
- (ii) If there is any doubt or suspicion, the column should be left blank and action taken as under:
 - (a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report to the next superior officer who will ensure that the follow-up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he had not watched the officer's work for sufficient time to form a definite judgement or that he had heard nothing against the officer, as the case may be.
 - (b) If, as a result of the follow-up action, the doubts or suspicions are cleared, the officer's integrity should be certified and an entry made accordingly in the Confidential Report.

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- (c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.
- (d) If as a result of the follow-up action, the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period and therefore action taken as indicated at (b) and (c) above."

We are not shown any material which even remotely suggests compliance of the instructions at (ii) above much less the final view with regard to the integrity of the applicant after taking of the above steps. As the final picture has to be obtained as a result of the follow up steps and the final picture could reflect (b), (c) or (d) above, it will be unfair to presume that integrity column left blank could be taken as amounting to either (c) or (d) to weigh for decision to retire the applicant. We therefore hold that the respondents had no validly acceptable material to hold that the integrity of the applicant was doubtful.

8. No doubt the articles of charges dated 10.7.86 came to be framed against the applicant. But the allegation made on the basis of the articles of charges is, to quote from the record that :

"Thus Shri D.C.Limbachia, by his above acts, exhibited lack of devotion to duty, thereby contravening the provisions of Rule 3(1)(ii) of CCS(Conduct) Rules, 1964".

Thus lack of devotion to duty has been alleged and not corruption. It is not known whether the charges came to be framed against the applicant on the basis of CBI enquiry which was stated in the screening record to be pending against the applicant. However, from mere fact of the CBI enquiry pending or from mere framing of charges alleging lack of devotion to duty, ground of doubtful integrity cannot be fairly raised

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against the applicant. The same can also not be construed merely from leaving the integrity column of the confidential report form blank as stated above.

9. The Government of India, Ministry of Home Affairs (Department of Personnel & Administrative Reforms) have issued office memorandum No. 25013/14/77-Estt.(A) dated 5th January, 1978 on the subject "Strengthening of administration - Premature retirement of Central Govt. servants - Issue of consolidated instructions regarding." This memorandum lays down the procedure and guidelines for reviewing the cases of Government employees in order to ensure that the powers vested in the appropriate authority are exercised fairly and impartially and not arbitrarily. The rules provide for constitution of a committee for making recommendation whether an officer should be retired from service in the public interest or whether he should be retained in service. The criteria the committee is required to follow contained in rule (3) are as follows:

- "(a) Government employees whose integrity is doubtful, will be retired.
- (b) Government employees, who are found to be ineffective will also be retired. The basic consideration in identifying such employee should be the fitness/competence of the employee to continue in the post which he is holding. If he is not found fit to continue in his present post, his fitness/competence to continue in the lower post, from where he had been previously promoted, should be considered.
- (c) While the entire service record of an Officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years, or where he has

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been promoted to a higher post during that 5 years period, his service in the higher post, has been found satisfactory.

- (d) No employee should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case."

The instructions also say when the above Rule (3) is not be used. Rule (5) lays down that the same are not to be used :

"(a) ~~to~~ retire a govt. servant on grounds of specific acts of misconduct, as a short-cut to initiating formal disciplinary proceedings or

(b) for reduction of surplus staff or as a measure of effecting general economy without following the rules and instructions relating to retrenchment."

10. We have held above that there is no material with the respondents to retire the applicant on grounds of doubtful integrity. We have also held that there are no legally surviving adverse remarks regarding the applicant's performance in service. Presuming that he was retired on grounds of ineffectiveness, the respondents are duty bound to consider the applicant's fitness/competence to continue in the lower post from where he has been previously promoted. The applicant has alleged in para 6.10 of the application that this was not done. No material has been shown to us that this consideration took place. Para 6.10 of the application elicited no specific reply from the respondents. The file of the proceedings of the committee referred to above also does not give indication that the applicant's suitability for the lower post was considered. This not having been considered becomes

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yet another lacuna of the impugned order. The respondents have themselves averred that the retirement is not based on the chargesheet which was given to the applicant. We therefore need not examine the applicant's allegation that he was retired because of the chargesheet. In any case, it is clear from the Government of India instructions that a Government servant cannot be retired on a specific act of misconduct as a short cut to initiating formal disciplinary proceedings.

11. Now the position of the case before us is that the respondents' reply denies the allegation and contentions of the applicant without saying what material the respondents took into consideration for the issue of the impugned order. When an adverse order which does not show the material on which it has been issued is challenged, at least while contesting ^{it} the respondents have to disclose the material they took into consideration for the issue of the order. As that has not been shown, the inference that the respondents have no valid legal material to issue the order is unavoidable. As stated above, perusal of the file of the Department also reveals that the respondents had no valid legal material to issue the impugned order. Besides, as stated above, the order suffers from the further weakness that the applicant's fitness/competence for the lower post was not considered.


12. The impugned order can therefore not sustain and the same has to be quashed and set aside with our following order :

We declare order No. 243/3/87.STG-II dated 22.5.1987 issued by Director General (Telecom) by which

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the applicant D.C. Limbachia was retired with immediate effect under clause (j) of Rule 56 of the Fundamental Rules illegal and hereby quash and set aside the said order with effect from the date it was issued. The applicant will be deemed to have continued in service as if the impugned order of premature retirement did not take effect. The Director General (Telecom) Respondent No.2 is directed to reinstate the applicant in service within thirty days of receipt of copy of this order and to disburse to him full pay and allowances for the period between the date of the illegal premature retirement and the date of his reinstatement in service within a period of three months from the date of reinstatement. The applicant's service till the date of his reinstatement should be regularised as on duty for all purposes. There will be no order as to costs.


(S. Santhana Krishnan)
Judicial Member

M. M. Singh
(M.M. Singh)
Admn. Member
28/5/91