

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 335 OF 1991

~~T.A. NO.~~

DATE OF DECISION 14-9-1994

Shri Prabhudas Tribhovandas Padia, Petitioner

Party-in-person.

~~Advocate for the Petitioner (s)~~

Versus

Union of India & Ors.

Respondent s

Mr. Akil Kureshi,

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman.

The Hon'ble Mr. V. Radhakrishnan, Admn. Member

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri Prabhudas Tribhovandas Padia,
Residing at K-10, IInd Floor,
Arihanthnagar, Memnagar,
Harsiddhnagar Co.Op.Housing Society,
Memnagar, Ahmedabad.

.... Applicant.

(Party-in-person)

Versus.

1. Union of India, notice to be
served through Secretary,
Central Board of Revenue,
Government of India,
Ministry of Finance,
Deptt. of Revenue,
New Delhi.

2. The Collector,
Central Excise & Custom
Ahmedabad,
Near Akashwani Bhavan,
Ahmedabad.

3. Principal Collector,
Central Excise & Customs
Race Course Circle,
Baroda.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A.No. 335 OF 1991

Date: 14-9-1994.


Per: Hon'ble Mr. V.Radhakrishnan, Admn. Member.

The applicant was working as Superintendent
in Central Excise & Customs Department, Ahmedabad.
His date of birth is 7.7.1935. He would normally
attain the superannuation on 31.7.1993. The case of
the applicant, on completion of 30 years' qualifying
service, was placed before the Review Committee



..... 3/-

on 31.1.1986 and the Committee after considering his case opined that the applicant ^{be} ~~has~~ retired under Rule 48 of CCS(Pension) Rules, 1972. The Ministry of Finance approved the recommendation by order dated 6.7.1988. Thereupon the Director of Central Excise and Customs, Ahmedabad vide his order dated 29.7.1988, retired the applicant with immediate effect, after paying him 3 months' pay and allowance, in lieu of notice. The applicant made representation against the order to the Principal Collector, Bombay. This was rejected vide his letter dated 4.9.1991. The applicant has stated that last C.R for the year 1987-88 in his case was not adverse, he had earned reward in service and further, he was not informed of the reasons of his premature retirement. The applicant states that he was working without any blemish and to the utmost satisfaction of his superiors. The applicant had a clean career all through out. He has stated that during the inspection conducted by Assistant Collector Shri P.V. Modi, he was stated to be a very good officer having knowledge of Rules etc. In the year 1981 the applicant had filed Special Civil Application No.1827/81 against Union of India regarding his transfer and as a result the Department had taken revenge by retiring him prematurely. He also stated that



Shri P. Vithaldas, Dy. Collector had given him a letter of appreciation that the applicant had achieved double revenue target for the year 1986-87. The applicant was given adverse remarks in his report for 1985 and he was graded as "poor". These were communicated and his representation against adverse remarks was considered and rejected. The applicant states that he was given adverse remarks due to bias shown against him by Shri R.S. Dinker, Assistant Collector. The applicant has stated that there was no disciplinary enquiry against him and he had performed the duties honestly. He has alleged that he has been retired prematurely taking into consideration extraneous and irrelevant facts not supported by the evidence on record and against the principles of natural justice. Accordingly, he has prayed for quashing and setting aside of the order of compulsory retirement.

2. The respondents have filed reply. They have denied the allegations made by the applicant. They have stated that the applicant's case was reviewed by the Review Committee after he had completed 30 years of service on 12.9.1985 and, after taking into account the record of the applicant, the Committee had come to the conclusion that he was not fit to be retained in service. The respondents have refuted the contention

of the applicant that his service was without blemish. They have pointed out that Assistant Collector, Customs, Bhuj had warned him for non-cooperation and deficiencies in his performance, Annexure R/2. Regarding the alleged letter of appreciation of the applicant, they have stated that no such letter is on record and applicant has not produced any letter along with the representation or before the Tribunal. With reference to the inspection by Shri Modi, they have stated that the applicant was asked to make up the deficiencies in his work. The ACR for 1985 in respect of the applicant was graded poor and adverse remarks were communicated, representation against the same was rejected. The respondents have denied the allegation that they have taken revenge against the applicant for filing Special Civil Application in the High Court against his transfer. They have also stated that no appreciation letter issued by Shri P.N. Vithaldas, Dy. Collector, is available on record. They have disputed the applicant's contention that he had recovered twice the targetted amount of revenue for the year 1986-87. They state that the ^{higher collection} ~~reason~~ was due to increase in the rate of duty and the introduction of new levy. Further, the revenue increase was only to the extent of 30%. They have stated that the

applicant had been warned several times during his service and he was given a letter regarding his inefficiency, non-cooperation and non-compliance of orders by the Assistant Collector, Bhuj by letter dated 19.11.1984, Annexure R/3. Their contention is that his case was reviewed by the review committee and the Committee opined that he should be retired prematurely on account of his "ineffectiveness". Accordingly, they have prayed for the rejection of the application.

3. The applicant has given further reply. The applicant has contended that the remarks given by Shri S.J. Singh, Assistant Collector, Bhuj were not correct. He had completed and decided all pending cases and solved all problems. He has alleged prejudicial and biased mind against Shri S.J. Singh. According to the applicant, there was no complaint from subordinates or from Trade/Public. He had to go on leave frequently due to family problems. He has alleged harassment by Shri S.J. Singh, Assistant Collector. The applicant denies knowledge of letter dated 17.9.1992, Annexure R/2. He has repeated that he was given a letter of appreciation by Shri Vithaldas, Dy. Collector. He has also repeated that



Shri Modi, Assistant Collector gave him very good report after inspection. The applicant also does not agree with the adverse remarks given for the report of 1985. The applicant has stated that he was working with all sincerity and devotion to duty. He has alleged that Shri S.J. Singh and R.S. Dinker were biased against him. According to the applicant, in the year 1981 when he had filed the Special Civil Application in High Court against his transfer Shri B. Kumar, Collector at that time was annoyed at his going to the Court and he has been given adverse report as directed by him. He has alleged that the requirement of Rule 48 of Pension Rules, 1972 was not complied with in its true spirit by Head of the Department and Review Committee. He has therefore, prayed for quashing the compulsory retirement order.

4. During the arguments Mr. Padia, party-in-person, stated that Shri Kumar was Collector of Customs at the time he went to the High Court for cancellation of his transfer. According to him, Shri Kumar was the member of Review Committee who had reviewed his case and with a biased mind he had recommended his compulsory retirement. He also stated that his working during his entire career was satisfactory, there was no enquiry against him and he carried out his duties efficiently hence he could not


understand how he was compulsory retired. He prayed for quashing the compulsory retirement order.

5. Mr. Akil Kureshi, for the respondents, stated that the applicant's case was reviewed by the Screening Committee and he was recommended for compulsory retirement as he did not prove effective. The Committee took into account his service record upto 1984 and also called for a special report for 1985. He stated that compulsory retirement is not a punishment, no stigma is attached to it, hence it is not challengable. The Review Committee and the Government have to form a opinion taking into account the entire record of service. The applicant had earned adverse remarks in 1984. He denied any malafides which could be one of the few grounds for challenging the order. The allegation that Shri Kumar, Collector who was allegedly biased against the applicant, was a member of Review Committee was not correct. In support of his case, he referred to judgment of Supreme Court in the case of Posts and Telegraphs Board and others, V/s. C.S.N. Murthy, (AIR 1992 SC 1368) where the Apex Court has decided that it is for the Departmental Authorities to come to the conclusion whether compulsory retirement was warranted in any particular case. In this case, the Review Committee had


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taken into account last two years of CR which were adverse. It is held that the only grounds on which Court can interfere can be (a) that the order is passed malafide, (b) that it is based on no evidence, (c) that it is arbitrary. In the present case no such conclusion can be reached. He also referred to the other case Baikuntha Nath & Ors. V/s. Chief District Medical Officer & Ors. (AIR 1992 SC 1020) which also laid down similar guidelines. He also mentioned the case of one Mr.N.A. Chauhan (Civil Appeal No. 5025/93 decided by the Supreme Court on 27.1.94) whose case was considered about an year after he attained the age of 55 years. The Court decided even such delay in reviewing the case is not fatal to the case and reversed the Tribunal's order quashing the voluntary retirement.

6. After considering the arguments of both the sides, it is seen that the allegation of malafides made by the applicant does not have much force as Shri Kumar, Collector, who was allegedly biased against him, was not a member of the Review Committee. We also agree that compulsory retirement is not a punishment and depends upon the subjective opinion of the Government to retain or dispense with the service of the officers after completion of 30 years. The only point which would require our attention is that though Screening Committee recommended, after its meeting on 31.1.1986,




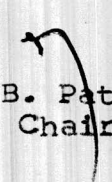
about the unfitness of the applicant, that recommendation was given effect to only on 20.7.1988 i.e., after a lapse of 2½ years. In the meantime, two more reports of the applicant for the calendar years i.e., 1986 and 1987, had been written. We feel that when there was such a long delay of more than 2½ years the Review Committee should have re-examined the case of the applicant taking into account the reports for 1986 and 1987 before final orders were passed. The case of Shri N.A. Chauhan (Civil Appeal No. 5025/1993) quoted by Shri Akil Kureshi does not cover such a case of delay and does not apply here. In that case it was held that merely because the case of a particular officer is not considered at the stage of 3 months prior to his attaining the age of 55 years or completing 30 years of service, it cannot be said that his case cannot be considered at any subsequent stage. Incidentally, we called for the copies of the two reports. While we are not going to pass any remarks on the performance of the applicant for the two years i.e., 1986 and 1987, we feel that the Review Committee should once again review the applicant's case with particular reference to the two CRs for the year 1986-87 also and form its opinion regarding retention or otherwise of the applicant in service. Accordingly we pass the following order.



ORDER

The case of the applicant is remanded to the Review Committee constituted for the purpose of reviewing cases of officers who had completed 30 years service and the Committee shall re-examine the case of the applicant taking into account the reports for 1986 and 1987 and record its recommendation regarding retention or otherwise of the applicant in service within a period of three months from the date of receipt of this order. On receipt of the recommendation of the Review Committee, the Government shall decide his case on the basis of that recommendation within a period of eight weeks thereafter and communicate the same to the applicant. The applicant is at liberty to challenge the decision of the Government if he feels aggrieved by it. ~~Both~~ parties to bear their own costs.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice Chairman

vtc.