

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 337/91
T.A.NO.

DATE OF DECISION 11/9/92

Abdul Khalique Vohra **Petitioner**

Mr. D.P. Padhy **Advocate for the Petitioner [s]**
Versus

Union of India and Others **Respondent**

Mr. N.S. Shevde **Advocate for the Respondent [s]**

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? yes
2. To be referred to the Reporter or not ? No
3. Whether their Lerdships wish to see the fair copy of the Judgment ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

DRH

Abdul Khalique Vohra,
residing at Rani Bag,
Housing Society,
Rajgadhi,
Palanpur (Banaskantha),
Gujarat State - 385 001.

... Applicant

(Advocate: Mr. D.P. Padhy)

VERSUS

1. The Union of India
The Chairman,
Railway Board,
Rail Bhavan,
New Delhi - 110 001.

2. The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

... Respondents

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A./337/91

Dated: 11/1/98

Per: Hon'ble Mr. P.C. Kannan, Member (J)

The applicant in the above OA has challenged the order of premature retirement dated 20.8.90 passed by the respondents under Rule 1802 (a) of the Indian Railway Establishment Code, 1987.

2. The case of the applicant is that he was appointed under the second respondent on 15.4.57 and subsequently promoted to Group II post of A.O.S. (G) Assistant Operating Superintendent (General) at Bhavnagar, Western Railway. The applicant's date of birth is 19.2.35 and as such he would have reached 58 years on 18.2.93. The date of his normal superannuation would fall on 28.2.93. The respondents, however, reviewed the service record of the applicant after reaching the age of 50 years as per the rules and after a review decided to retire the applicant from ser-

Dh

Contd.. 3/-

vice under Rule 1802(a) of the Code (Ann.A-1). The applicant states that the action of the respondents is wrong as there was no complaint from any public against him and therefore there is no ground for his compulsory retirement on the ground of public interest. He further submits that his ACR for the current year (ending 31.3.90) did not contain any adverse remarks and he was also not communicated any adverse remarks for the year 1989-90 also. For the year ending 31.3.88, the ACR contained some adverse remarks. He contends that as the subsequent years of his ACR were not adverse, the earlier adverse remarks for the year 1987 cannot be relied upon. He also states that he was appointed by General Manager of the Railways and therefore the order of compulsory retirement passed by the Railway Board is not valid. He states that he had earned appreciation of Rs.500/- as an award from the DRM (vide letter dated 23.5.89) and this would clearly indicate that his performance was good. He also contended that he was never informed reasons of his premature retirement or of his shortcomings.

3. The respondents in their reply stated that the competent authority had considered the case of the applicant in terms of the rules on the basis of ACRs of 5 years prior to taking the decision to retire the applicant prematurely in public interest. It was further stated that the award as mentioned by the applicant was made for certain specific work ^{performed by a unit as a whole} and that cannot wipe out the adverse remarks of the applicant. The applicant being Group 'B' officer, only the Railway Board being the appointing authority is competent to conduct such a review in terms of the Rule 1802(a) of the Code. In terms of the procedure prescribed in this regard, the General Manager, W. Rly., conducted a review of the case of officers up to selection grade and the case of the applicant was recommended for premature retirement in public interest. This matter was further considered by the Railway Board and after making a detailed review the competent authority decided to retire the applicant prematurely in public interest.

~~opinion~~. The applicant was also paid a sum equivalent to three months of his pay and allowances in lieu of the notice required under this Rule. The applicant subsequently filed ~~an appeal by~~ his letter dated 19.9.90 (Ann.A-9). In the said appeal, the applicant inter-alia stated that his ACR for the period 1987-88 was vague and general in nature and his performance from 1985-90 speaks volume in his favour. He also pleaded for sympathetic consideration, keeping in view his family burdens. In the circumstances, he requested that his case should be reviewed sympathetically and he should be reinstated. The appeal was duly examined by the Railway Board and a decision was taken at the level of the Railway Minister that there are no merits in the appeal and therefore, the earlier decision of the Railway Board should be allowed to stand.

4. Heard Shri D.P. Padhye and Shri N.S. Shevde, counsel for the parties. At our direction, the respondents produced the relevant files of the Ministry of Railways and the ACRs of the applicant which was taken on record. Shri Padhye filed written arguments which were also taken on record.

5. Shri Padhye, counsel for the applicant has challenged the decision of the Railway Board mainly on the ground that there was no public interest in retiring the applicant. His contention is that the applicant was never chargesheeted and there was no case of insufficiency or doubtful integrity. He submitted that the ACR which contained certain remarks about his integrity cannot be relied upon. ^{~~He also referred to the cash award received by the applicant in 1989.~~} He also stated that the Railway Board is the higher authority than the appointing authority namely the General Manager who is the competent authority to pass the order of retirement. In this connection, he referred to the following decision

- (1) ATR 1988 (2) CAT 602
Shri Nagesh G. Divakar vs. UOI & Others
- (2) ATR 1988 (1) CAT 326
A.N. Saxena & another vs. Chief Commissioner
- (3) ATR 1989 (2) H.P.A.T. 642
Shri Ram Singh Pandav vs. State of H.P. & another

6. Shri Shevde, counsel for the respondents stated that in this case the competent authority is the Railway Board and as the applicant was subsequently promoted to Group 'B' post, the appointing authority is the Railway Board. He also referred to the decision of the Supreme Court in the case of H.G. Venkatachelliah Sethi vs. UOI (1988 SCC(L&S) 152).

7. We have carefully considered the submissions of the counsel and also examined the records produced and the pleadings.

8. The applicant at the relevant point of time was working in Group 'B' post as Assistant Operating Superintendent (General) at Bhavnagar, Western Railway. As the applicant belongs to Group 'B' post, the Railway Board being the appointing authority for such posts, would be the competent authority to conduct a review in accordance with the 1802(a) of the Code.

9. A perusal of the ACRs of the applicant shows that his ACR for 1987-88 contained adverse remarks which was duly communicated to the applicant. The applicant filed an appeal against such remarks which was duly considered by the competent authority and rejected the appeal. This decision was accepted by the applicant. He attained the age of 50 years in March, '85.

10. Rule 1802(a) of the Railway Establishment Code reads as follows:-

"Notwithstanding anything contained in this Rule, the appointing authority shall if is of the opinion that it is in the public interest to do so, have the absolute right to retire any Government servant by 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 Group 'A' or Group 'B' service or post in a substantive or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.
- (ii) in any other case, after he has attained the age of 55 years."

11. As the applicant attained the age of 50 years in March, '85 the General Manager conducted a review under Rule 2046(h) of the Code and communicated his decision to the Railway Board. ^{Retirement position of} vide his letter dated 01.3.90. ¹ This communication reads as follows:-

"In terms of the extant orders, cases of officers of the T(T) & C Department upto Selection Grade have been reviewed by the General Manager.

Shri Abdul Vohra, AOS (Gr. 'B') has been recommended for premature retirement on grounds of "ineffectiveness" and "doubtful integrity". His service particulars are given below:

Name	Date of Birth	Date of appointment in Railway	Date of appointment in Class II
Shri Abdul Vohra	18.2.1935	15.04.1957	13.03.1984

Since he is a Group 'B' officer, his suitability or otherwise for continuance in Group 'C' service was also considered. However, in view of his "Doubtful Integrity" he was not considered as a desirable type of person to be retained in Class III service."

12. The Railway Board conducted a detailed review of service records of the applicant and the Full Board of the Railways came to the conclusion that the performance of the applicant both in terms of the ACRs and integrity ~~that the applicant~~ was poor and

therefore the applicant should be retired prematurely. In conducting the said review, the Railways have considered five years of ACRs from 1985-86 to 1989-90. Perusal of the review conducted by the Railway Board shows that the applicant received some adverse remarks for the year ending on 31.3.88, and "average" reports for certain years. His reputation was also bitterly commented upon. His integrity was also not fully certified. The Railway Board while conducting the review have followed the instructions in this regard. The decision to retire the applicant was in accordance with the rules/instructions. The receipt of award in 1989 is for the performance of the unit as a whole and this cannot wipe out adverse ACR 13. We have carefully considered the court decisions referred to by the applicant. In the case of Nagesh G. Divakar vs. UOI (ATR 1988 (2) CAT 602), the order of premature retirement was passed on the basis of adverse remarks contained in the ACR of 1975-76 showing the integrity of the applicant as doubtful for filing ~~l~~ false LTC claim. Subsequently the Special Judge held that the LTC claim of the applicant was genuine. In the facts and circumstances, the Tribunal struck down the retirement order. In the case of A.N. Saxena vs. Chief Commissioner (ATR 1988 (1) CAT 326), the order of compulsory retirement was based on certain private complaints about the doubtful integrity which was examined behind the back of the applicant. The Tribunal in the circumstances, quashed the order of compulsory retirement. In the case of Ramsingh Pandav vs. State of H.P. (ATR 1989 (2) HPAT 642), the order of premature retirement of the applicant was made on the basis of one adverse entry in 1962. However, in 1981 the applicant was allowed to cross Efficiency Bar. In the circumstances, the Tribunal held that the order of premature retirement based on 1962 ACR was arbitrary.

14. The cases referred to by the applicant have no application to the facts of the present case as the order of premature retirement of the applicant was based on the review of ^{preceding} past 5 years of service records.

15. In the case of H.G. Venkatachelliah Vs. UOI(1998 SCC(L&S) 152) the Hon'ble Supreme Court has held that even a relevant solitary adverse remark with regard to the integrity although preceded by promotion could sustain an order of compulsory retirement under Rule 2046(h) of the Indian Railway Establishment Code. The Supreme Court in the above case also held that compulsory retirement can be ordered even on the basis of uncommunicated adverse remarks. The relevant observations of the Supreme Court in para 4 and 5 reads as follows:-

"It has been further urged by Shri Sundaravardan that the order of compulsory retirement could not be passed on the basis of a solitary adverse entry contained in the annual confidential report because the earlier record of the appellant was clean. Merely because till his promotion to the post of Deputy Chief Mechanical Engineer on 20.11.1974 there was nothing adverse in the service record of the appellant, does not mean that the action for compulsory retirement of the appellant could not be taken after such promotion if it is found that after such promotion there has been deterioration in his performance and an adverse remark about his integrity has been made. The contention of Shri Sundaravardan that an order for compulsory retirement cannot be passed on the basis of a solitary adverse entry in the service record cannot be accepted. The question whether action for compulsory retirement should be taken on the basis of a solitary adverse entry has to be considered in the facts of each case. Having regard to the facts of the present case, it cannot be said that action for compulsory retirement could not be taken against the appellant.

Lastly, it was urged by Shri Sundaravardan that the adverse remark was not communicated to the appellant and in the absence of such communication the said remark could not be made the basis for passing the order of compulsory retirement. We find no merit in this contention in view of the law laid down by this Court in Baikuntha Nath Das v. Chief Distt. Medical Officer wherein it has been held that an order of compulsory retirement is not liable to be quashed by court merely on the showing that while passing it une communicated adverse remarks were also taken into consideration and that the said circumstance, by itself, cannot be a basis for interference."

In the case of C.D. Ailawadi vs. UOI (AIR 1990 SC 1004), the Hon'ble Supreme Court has held that if the Committee forms an opinion on the basis of service records of an employee that he ceased to be useful, then the order of compulsory retirement is not illegal. The relevant observations of the Hon'ble Supreme Court in para 8 of the judgment reads as follows:-

"An aggrieved civil servant can challenge an order of compulsory retirement on any of the following grounds as settled by several decisions of this Court, (i) that the requisite opinion has not been formed; or (ii) that the decision is based on collateral grounds; or (iii) that it is an arbitrary decision. In Union of India v. Col. J.N. Sinha (1971) 1 SCR 791 : (AIR 1971 SC 40) this Court held that if the civil servant is able to establish that the order of compulsory retirement suffered from any of the above infirmities, the Court has jurisdiction to quash the same. It is not disputed that compulsory retirement under R.56(j) is not a punishment as it does not take away any of the past benefits. Chopping off the dead wood is one of the important considerations for invoking R.56(j) of the Fundamental Rules. In the instant case, on the basis of the service record, the Committee formed the requisite opinion that the petitioner had ceased to be useful and, therefore, should be retired prematurely. We do not think petitioner has been able to place any satisfactory material

for the contention that the decision was on collateral grounds. Once the opinion is reached on the basis of materials on record, the order cannot be treated to be arbitrary. The service record of more than five years which we have perused shows that the higher officers under whom the petitioner had worked were different and different sets of reviewing officers had also made the entries. Therefore, the reports must be taken to have reflected an appropriate and objective assessment of the performance of the petitioner."

16. In this case, the order of premature retirement was issued by the competent authority on the basis of review of service records of the preceding 5 years. The applicant did not earn good reports in the preceding five years. His integrity was also not fully certified. After a review, the competent authority also considered the suitability of the applicant for continuance in Group 'C' service but it decided not to retain in Group 'C' service. In the facts and circumstances, we hold that the order of compulsory retirement dt. 20.8.90 is in accordance with the rule 1802 (a) of the Indian Railway Establishment Code. The OA accordingly fails and is therefore dismissed. No costs.

P.C. Kannan
(P.C. Kannan)
Member (J)

V. Ramakrishnan
11/9/1998
(V. Ramakrishnan)
Vice Chairman

hki