

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO./376/92
DX/NO.

DATE OF DECISION 20th Sept. 2000

M. B. Nakum

Petitioner

Mr. P. H. Pathak

Advocate for the Petitioner [s]

Versus

Union of India and another

Respondent

Mr. B. N. Doctor

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 ?
2. To be referred to the Reporter or not ? *Y/N*
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Y/N*

M.S.Nakum
Sub Postmaster
Dhoraji- 360/410

Applicant

Advocate: Mr. P.H.Pathak

Versus

1. Union of India
Notice to be served through
Chief Postmaster General
Gujarat Circle
Navrangpura, Ahmedabad.
2. Director of Postal Services
Office of the Postmaster General
Rajkot Region
Rajkot- 360 001. Respondents

Advocate: Mr. B.N.Doctor

JUDGEMENT

IN

Dated 20th Septr. 2000

O.A./376/92

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

The applicant an employee of the Postal Department has challenged the order dated 29.11.91 (at Annexure-A) which retires him prematurely under F.Rs. 56 (j) paying him a sum equivalent to amount of pay and allowances for a period of three months.

2. The applicant joined Postal Department on 22.1.1954 at Group D level. In 1960, he was promoted as Clerk and in 1975 further promotion was given to him in the lower Selection Grade.

His date of birth being 5.2.35 he attained 55 years of age on 5.2.1990. The Director of Postal Services Rajkot by the order dated 29.11.91 has retired him by F.R. 56(j) and this has taken effect from 5.12.91. The applicant submitted a representation to the Director General of Posts on 10.1.92 which also was rejected and he was informed to that effect. The present O.A. has been filed challenging the premature retirement.

3. We have heard Mr. Pathak for the applicant and Mr. Doctor for the respondents.

4. Mr. Pathak submits that the applicant attained the age of 55 years on 5.2.90. The departmental Promotion Committee had assessed his suitability for promotion to the higher selection grade and by an order dated 18.4.90 (copy at Annexure A-2) the department had offered him regular promotion. In other words, after the date he attained the age of 55 years, he was considered and found fit for the promotion to HSG-II. The counsel submits that when the applicant has been considered suitable for regular promotion in April 1990 there was no justification for retiring him under F.Rs. 56(j). He refers to the guidelines issued by the department which are contained in the Ministry of Finance O.M. dated 29th August 1975 reproduced in Appendix 10 in Swamy's Compilation on Pension Rules particularly to Part-II- Criteria.

procedure and guidelines. 3(c) of this para reads as follows:-

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

This makes it clear that ordinarily a person should not be retired when he has received promotion within the last five years. Mr. Pathak says that an extraordinary situation could arise where the integrity is doubtful which is not the case so far as the present applicant is concerned. Mr. Pathak also refers to the decision of the Supreme Court in the case of D. Ramaswamy vs. State of Tamil Nadu AIR 1982 SCC L & S 115 Head Note of which is as follows:-

"Head Note:- Labour and Services- Compulsory retirement- Order of retirement passed soon after promotion to selection post, in absence of any circumstances adverse to the aggrieved officer, held, not justified- Relevancy of past record- Fundamental Rule 56(d)- T.N. General Rules for the State and Subordinate Services, Rule 36(b)(i)- T.N. Special Rules for Commercial Taxes Service, Rule 2(b)".

The counsel submits that the action of the department cannot be sustained as it is in conflict with the departmental instructions and also against the law laid down by the Supreme Court in this regard.

Mr. Pathak also contends that the applicant had attained the age of 55 years on 5.2.1990 and as such his suitability or otherwise for retention ought to have been considered for the period during July 1989 to September 1989. In actual fact his assessment for continuance was done only in October 1991 and such a belated consideration is against the provisions of Section IV of the consolidated instructions of the Ministry of Finance dated 29th August 1975 referred to earlier. He relies in this connection on the decision of the Jabalpur Bench of this Tribunal in the case of J.M. Athar vs. Union of India (1987 4 ATC 310) Head Note of which is reproduced as follows:-

" Compulsory retirement- Procedure regarding F.R. 56(j) (i)- CCS (Pension) Rules, 1972- Rule 48- Govt. of India, Ministry of Home Affairs O.M. No. 25013/14/77-Estt. (A) dated 5.1.1978- Held, instructions in the O.M. mandatory- Hence, compulsory retirement ordered in violation of disregard of its provisions invalid- Petitioners' cases ~~xxfxxm~~ considered much after they attained 50 years of age- Events subsequent to their becoming due for consideration also taken into account- Delay sought to be covered under Rule 48- Held, in view of clear reference to F.R. 56(j)(i) in retirement order, plea not sustainable- In one case, power ~~ex~~ used as short cut to disciplinary proceedings - Review Committee not recording reasons in support of its recommendations- Indication also not given whether whole record or confidential reports for the last five years only considered- Held, proper procedure not followed and therefore compulsory retirement invalid. "

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by pleading that petitioners' case considered after 30 years' of qualifying service

The counsel submits that the fact that the applicant was allowed to continue beyond February 1990 for almost two years should be taken to mean that he was considered fit for retention and such a belated consideration and decision to retire him cannot be sustained.

Mr. Pathak contends that the applicant was due for superannuation in the normal course in February 1993 whereas he was retired prematurely in December 1991 just about a year prior to his normal date of superannuation. He states that para 3(d) of Section II of the guidelines provides that an employee should not normally be retired on ground of ineffectiveness, if he will be retiring on superannuation within one year from that date. According to Mr. Pathak, this principle should apply to the present case as the recommendation for the premature retirement of the applicant was given in October 1991 which is just one year from the normal date of superannuation.

5. Mr. Pathak submits that even on facts the impugned order cannot be sustained. The Review Committee considered the applicant's case on the basis of a statement made available to them and has not applied its mind to all the aspects. He submits that it is necessary for the Review Committee to take into account the entire record of service including

the favourable factors and adverse factors. The Review Committee has gone on the basis of the adverse factors only and has not taken into account other factors. Besides it has not given any reasons in support of its decision. He refers in this connection to the observations of the Tribunal in para 2 (a) in Athar's case.

Mr. Pathak submits that the Review Committee has ignored the fact of promotion but has taken into account a number of events which took place after February 1990 namely the penalties awarded to the applicant in March 1980, March 1990, adverse remarks dated 25.4.90 and penalties imposed in August 1990 and Oct. 1990 and adverse remarks communicated ~~on~~ on 5.6.91. In other words, the respondents have taken the decision on the basis of uncommunicated adverse remarks and developments which took place after the applicant had attained the age of 55 years and this is not permissible. He contends that the impugned order is liable to be quashed on the ground that it has been passed without proper application of mind.

6. Mr. Doctor for the respondents
the application. He

required is that the entire service record of the applicant should be taken into account and this has been duly done. He does not agree that the un-communicated adverse remarks on the crucial date cannot be taken into account when it forms part of the record considered by the Review Committee, there is no harm in such remarks being taken into consideration. He also states that the various guidelines of the department are not mandatory and that it is open to the department to conduct a review even after the time limit prescribed by the guidelines. He refers in this connection to the decision of the Supreme Court in the case of Union of India vs. N.A. Chauhan 1995 (5) SLR 506. He also relies on the decision of the Supreme Court in the case of Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another (1992) 2 Supreme Court cases 299. The Supreme Court has held therein that an order of compulsory retirement does not amount of punishment and principles of natural justice are not required to be observed in passing an order of compulsory retirement. The fact that the Departmental Promotion Committee had assessed him suitable for the HSG-II scale does not vitiate the order as what is required is consideration

of the entire service record and not merely of the past few years. In any case, the order dated 18.4.90 as at Annexure A-2 makes it clear that the promotion of the applicant to the level of HSG II is subject to certain conditions. As the applicant was undergoing a penalty of withholding of promotion for one year as per memo dated 28.3.90, the promotion order was not given effect to.

Mr. Doctor says that the applicant's case was objectively considered by the Review Committee consisting of Senior Officers and also by the Representation Committee at the level of Director General of Postal Services. He contends that there is no substance in the allegation that the Review Committee had not applied its mind to the issue. The Review Committee had come to the finding that the applicant is not fit to be retained in service after taking into account his entire service record. Mr. Doctor says that the main document in such cases will be the C.R. which has been duly taken into account and no further reasons in such cases are required to be recorded or communicated. Mr. Doctor says this is not a case that would warrant any interference by the Court and the O.A. should be dismissed.

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7. We have considered the contentions of both the counsel.

8. As brought out earlier, the grounds in support of the O.A. are the following:-

(a) The applicant has been found suitable for promotion to the HSG II in April 1990 and as such he should not have been retired under F.R. 56(j).

(b) The applicant attained the age of 55 years in February 1990 whereas he was considered in October 1991 for further continuance in service and that the respondents had taken into account subsequent events and that the same is not permissible.

(c) The respondents have gone on the basis of adverse factors and remarks which took place subsequent to his attaining 55 years of age including un-communicated adverse remarks. As the applicant had crossed the age of 55 years in February 1990 his case ought to have been considered in July/September 1989 in terms of Section IV of the Consolidated Instructions of the Ministry of Finance. In fact they had considered the applicant's case only in October 1991 and this would vitiate the entire proceedings.

(d) The impugned order was issued in contravention of the guidelines of the Ministry of ^{new} _{nr} Finance. Ordinarily he could have been retired when only about a year is left for normal date of superannuation. Besides promotion orders were in his case in Oct. 1990 ^{and his was} _{nr} issued were disregarded while passing the impugned order.

(e) It is also submitted that the Review Committee had mechanically gone on the basis of a statement prepared on the service rendered by the officer and the Committee had not given any reasons in support of its decision.

9. ^{flat} _{nr} We may at the outset state the scope for the interference by Courts and Tribunals with the orders under F.Rs. 56(j) is limited. This aspect has been set out in detail by the Hon'ble Supreme Court in the case of Baikuntha Nath Das and another vs. Chief Dist. Medical Officer, Baripada and another (1992) 2 SCC -299 in which the court has held that orders under Section 56 (j) for compulsory retirement is not a punishment. Para 34 (3) of the judgement in this case is reproduced as follows:-

"34 (iii)

Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala-fide or (b) that it is based on no evidence or (c) that it is arbitrary- in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter. of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks loose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.7

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above".

In the present case while an allegation of bias is levelled against the authorities the applicant has not been able to give any material in support of the same. We ^{reject} ~~quash~~ the contention of mala fides. We have only to

examine whether the impugned order is arbitrary or perverse in the light of the directions of the Supreme Court in Baikuntha Nath Das's case referred to supra.

10. We find from the reply statement that the applicant had been given adverse remarks on various occasions and he was also censured and penalised. Para 7 of the reply statement brings out such instances. On 31.3.82 and 27.9.90 he was censured. On 24.5.82 and 25.4.90 and 5.6.91 he was communicated with adverse remarks which was acknowledged by him. On 28.3.90 he was inflicted with penalty of withholding of one increment promotion by one year and on 30.4.90 he was awarded the punishment of withholding of one increment for one year. On 31.7.90, he was given penalty of withholding of one increment for a period of six months. He was communicated the adverse remarks on 24.5.92 and also on 25.4.90 and on 5.6.91. Apart from the above he was also having adverse remarks during the years 1960-61, 1965-66, 1966-67, 1969-70 and 1971-72. It is clear from these that the applicant has not been having a good record of service. As the entire record of service has to be taken into account while reviewing such cases the action/decision of respondent department in the present case cannot be taken to be arbitrary.

11. The applicant has submitted that the guidelines of the Ministry of Finance issued in August 1975 (dated 29th August 1975) have not been fully complied with. For example he was considered fit for promotion to the higher selection post in April 1990 and that he had only about a year before the normal date of his superannuation and that his case normally was due for review in July 1989. The Review Committee had assessed his service records in October 1991 whereas per the guidelines the same should have been done in July and September 1989. The respondents submit that through oversight his case was not submitted by the S.P.C. in time and later on his case was assessed.

While the Jabalpur Bench of this Tribunal had held that the guidelines referred to are mandatory this has been overruled by the Supreme Court making it clear that these guidelines are not mandatory.

We may also refer in this connection
Union of India and Others vs.
to the case of N.A. Chauhan, 1995(5) SLR 506

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In para 3 of the Supreme Court has observed
as follows:-

authority. Govt. instructions relied upon by the Tribunal are only the

"3. We have heard learned counsel for the parties. This Court has authoritatively laid down in various judgements that the power under Fundamental Rule 56 (j) can be exercised by the appropriate authority at any time in public interest after the government servant has attained the relevant age or has completed the period of service as provided under the Fundamental Rules. The appropriate authority has to form the opinion that it is in the public interest to retire a person under Fundamental Rule 56(j) on the basis of the service record of the person concerned. There is no other bar for the exercise of the power under the said Fundamental Rule by the prescribed/guidelines laid down by the Central Government for its functioning. A government servant cannot be heard to say that though the order of retirement is justified on the basis of his service record but since there is violation of some Government instructions the order is liable to be quashed. The Tribunal is wholly unjustified in holding that prejudice was caused to the respondent in the sense that he could legitimately believe that under the instructions his case would not be reviewed after the lapse of certain period. The action under Fundamental Rule 56(J) against a Government servant is dependent on his service record earned by him till he reaches the age or completes the service provided under the said rule. If the record is adverse then he cannot take shelter behind the executive instructions and must be "chopped off" as and when he catches the eye of the prescribed authority".

As such the fact that the applicant's case was considered in October 1991 when he had attained the age of 55 years in February 1990 or that ~~that~~ the guidelines were not followed strictly ~~would~~ would not by itself vitiate the decision.

The applicant has contended that when the orders of promotion in his case were issued in April 1990 he could not have been retired., prematurely. We may in this connection refer to

the case of State of Punjab vs. Gurdas Singh etc.- 1998 (1) S.C. S.L.J. 522. In para 11 the Supreme Court has observed that:

"Here also the only ground on which the order prematurely retiring Gurdas Singh was set aside was that two adverse entries after his promotion from the rank of Asstt. Sub-Inspector of Sub-Inspector were not communicated to him and earlier adverse entries could not be taken into account because even when those existed Gurdas Singh had earned his promotion. It is not necessary for us to again reiterate the principles where the Court will interfere in the order of premature retirement of an employee as these have been accurately set down by various pronouncements of this Court and particularly in Baikunth Nath Das case. Before the decision to retire a Government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well".

12. Similarly the fact that certain subsequent developments which attracted adverse notes and also resulting in penalties and also the penalties which were inflicted after February 1990 were considered by the authorities will not make any material difference in ^{view of} the fact that the respondents are required to take into account the entire record of service when they conduct the review.

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The Review Committee considered the entire service records and found that the same was not satisfactory.

13. We also hold that there is no basis for the allegation that the Review Committee had not applied its mind. We find from the relevant file (which was also shown to Mr. Pathak) that the Review Committee consisted of the Post Master General, Rajkot and Director of Postal Services, Rajkot. It had considered a number of officers and recommended retention of all the officers excepting two including the applicant. C.R. dossier was also made available to the Committee. There is nothing to suggest that the Committee had not considered the relevant entries in the entire service record of the applicant before making its recommendations.

14. We note that the applicant has submitted a representation to the Director General of Posts, New Delhi and this was rejected. There was due consideration by the various authorities while taking the decision.

15. In the light of the foregoing discussion, we hold that none of the grounds urged in support of the O.A. is of any assistance to the applicant. The impugned order is not vitiated by mala fides nor is it arbitrary or perverse. It has been issued after taking into consideration the entire records of service of the applicant. The fact that certain administrative guidelines were strictly complied with does not warrant interference by the Tribunal. The O.A. is devoid of merit and is dismissed without any orders as to costs.

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

DRS/2079/2000
(V. Ramakrishnan)
Vice Chairman