

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

**OA/421/1993**

**Date of Decision : 12.01.2001**

**Mr. Chhotubhai Chaudhari** : Petitioner (s)

**Mr. K. C. Bhatt** : Advocate for the petitioner [s]

**Versus**

**Union of India & Ors.** : Respondents [s]

**Mr. B. N. Doctor** : Advocate for the Respondent [s]

**CORAM :**

**THE HON'BLE MR. A. S. SANGHAVI : MEMBER (J)**

**THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER (A)**

**JUDGMENT**

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

Chhotubhai Chaudhari  
Deputy Post Master,  
Head Post office,  
Bardoli - 394 601.

- Applicant -

**Advocate : Mr. K. C. Bhatt**

Versus

1. Union of India through  
The Director-General,  
Department of Post,  
Ministry of Communication,  
Govt. of India, Parliament Street,  
New Delhi - 110 001.
2. The Director of Postal Services,  
O/o. Postmaster General,  
Vadorara Region,  
Vadodara - 390 002.
3. The Supdt. of Post Offices,  
Bardoli Division,  
Bardoli - 394 601.

- Respondents -

**Advocate : Mr. B. N. Doctor**

**JUDGMENT**  
**O.A 421 of 1993**

Date : 12/01/2001

Per Hon'ble Shri. A.S. Sanghavi : Member (J).

The applicant an employee of the postal department is aggrieved by the order dated 3.4.92, of his compulsory retirement under Rule 56 (j) of the Fundamental Rules, issued by the respondents and has prayed for the quashing and setting aside of that order and his being reinstated in services with all consequential benefits. According to the case of the applicant he

was working as a Dy. Postmaster at Bardoli and was served with a show cause notice for premature retirement under F.R. 56 (j) dated 3.4.92. He had represented against the show cause notice dated 11.6.92 but his representation was rejected vide order dated 3.11.92 and he was made to retire compulsorily under F.R. 56 (j). The applicant has contended that the show cause notice was given to him after he had completed more than 30 years of service and as such the show cause notice did not comply with the requirements of the F.R. 56 (j) and therefore the order retiring him compulsorily, is bad in law. According to him he had completed 30 years of service on dated 1.10.88 and as the review of his continuance in service was taken before the completion of the 30 years and he was allowed to continue in service up to the age of superannuation i.e. up to 31.1.95, the respondents could not have issued the show cause notice to him subsequently and could not have passed the order of compulsory retirement. He has also made a grievance that he was relieved even before his representation was decided and hence also the order is bad in law. He has also contended that his work and conduct were quite satisfactory and he was even found fit for promotion and hence his retirement was effected without any adverse material existing and as such also the order is bad in law. According to the applicant in view of the various Govt., guidelines the notice must be given before the Govt., employee attains the age of 55 years and in his case since the notice was given to him after he had attained the age of 55 years, the show cause notice is bad in law and he could not have been removed from the services. On these

grounds he has prayed that the impugned order be quashed and set aside and he be reinstated with all consequential benefits.

2. The respondents on the other hand in their reply have contended inter alia that the order of premature retirement under Rule 56 (j) passed against the applicant was passed after considering service record of the applicant and after following the due procedure prescribed. According to them the applicant had completed 55 years of age on 1.11.92 and hence, the review to consider his retention in service was taken up during the quarter ending September' 1991. Since on the review of his service it was found that his services were no more necessary, the DPS Vadodara, issued the notice to the applicant on dated 3.4.92 ordering his retirement from service on the forenoon of the day following the date of the service of the notice to him. The notice was received by the applicant on 6.4.92 and hence he was retired w.e.f. 7.7.92 forenoon. The applicant had meanwhile sent a representation on dated 1.6.92 to the Representation Committee requesting it not to relieve him from service till the representation was decided. The committee had rejected the representation vide communication dated 3.11.92 conveyed to the applicant vide P.M.G. Vadodara dated 18.11.92. The respondents have maintained that there was no question of violation of F.R. 56 (j) as claimed by the applicant and that the order of the compulsory retirement of the applicant was passed in public interest to weed out inefficient persons from Govt. service. According to them there were several factors which necessitated the conclusion of

the applicant being inefficient for further government service and some of them were :-

*(i) He was not considered fit for promotion to HSG I by DPC on 30.11.89,*

*(ii) He was reverted to HSG II when working as HSG I P.M. Godhra, on ad hoc basis,*

*(iii) Careless and unsatisfactory working of the applicant prompted the S.P. Bardoli, to report to the PMG, Vadodara seeking his transfer citing incidents of carelessness vide letter dated 19.8.91,*

*(iv) He was awarded punishment by S.P. Bardoli of withholding of increment for six months without cumulative effect on dated 22.10.90. Another punishment of withholding of next increment for six months on 4.9.91, another withholding of increment for a period of one year without cumulative effect on dated 20<sup>th</sup> Sept., 1991.*

3. The respondents have also denied that the notice issued to the applicant was not in conformity with the provisions of 56 (j) and have contended that the notice of the retirement can be issued at any time after he attains the specific age of 55. They have denied that there is a violation of the statutory provisions or any guidelines of the Govt., and have also denied that the impugned order was passed with mala fide intention or that the order is bad in law. Asserting that the order was legal and correct they have prayed that the O.A be dismissed with costs.

4. We have heard the learned advocates of both the parties at length and have carefully gone through the pleadings and the documents on record. The main contention of Mr. K.C. Bhatt, learned advocate appearing for the applicant is that though the

applicant had completed the age of 55 years on dated 1.1.92 and he was allowed to continued in the service thereby implying that he was free from the danger and the sword which was hanging over his head is removed, the respondents have served him with a notice of compulsory retirement on 6.4.92 after he had completed 55 years of age. Contending that no such notice could have been issued once the Govt. employee has crossed the age of 55, Mr. Bhatt has submitted that F.R. 56 (j) specifically requires that notice is to be given to the Govt., servant before he attains the age of 55 and not after crossing of that age. According to Mr. Bhatt, as soon as the Govt., servant attains the age of 55 years and notice is not served on him, he becomes free from danger and the sword which was hanging over his head stands removed. Relying on the government guidelines he has further submitted that the note-2 below F.R. 56 (j) suggests that the notice referred to may be given before the Government servant attains the age specified and if it is decided to give three months pay and allowance in view of such notice, then the notice is not required. However, if notice is to be given, it must be given before the government servant attains the age specified. According to Mr. Bhatt this being mandatory the contravention of this provision makes the notice illegal and bad in law and therefore the order passed by the respondents retiring the applicant compulsorily under F.R. 56 (j) deserves to be set aside. He has further submitted that the applicant has completed 30 years of service on dated 1.10.1988. Since he had been retained in service, he could not have been asked to retire prematurely thereafter. He will have to be continued in service till he attains the age of superannuation.

5. It appears that the submissions of Mr. Bhatt are made on account of the misreading of the Rule 56 (j) of F.R.. In any case the law regarding the compulsory retirement of government servant is now well settled with the various Supreme Court's pronouncements. In the case of Baikuntha Nath Das and Anr. Vs. Chief District Medical Officer, Baripada and Anr. reported in (1992) 2 SCC 299, the Supreme Court has laid down that the orders under Section 56 (j) for compulsory retirement are not by way of punishment. Laying down the grounds of challenge to this order, it is observed by the Supreme Court that 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 passed on no evidence or (c) that it is arbitrary and 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. It is also laid down therein that the Government or the reviewing committee as the case may be, shall have to consider the entire record of service before taking a decision in the matter and that the order of compulsory retirement is not liable to be quashed by the Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration.

6. Subsequently when such an order was challenged on the ground of violation of the provisions of 56 (j) and also on the ground of non-compliance with the Government guidelines, rejecting the contention raised, the Supreme Court has laid down that the order of compulsory retirement justified by service record

cannot be vitiated by the mere fact that after attaining the prescribed age his case was considered not within the time schedule contemplated in the government instructions but at a later stage. In the case of UOI Vs. Nasirmiya Ahmadmiya Chauhan, reported in 1994 Supp (2) SCC 537, dealing with the identical arguments advanced in this case, the Supreme Court has observed in para 3 of the Judgment as under :-

*"This court has authoritatively laid down in various judgments 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 authority. Government instructions relied upon by the Tribunal are only the 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 was 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."*

7. This decision clearly answers the contentions raised by Mr. Bhatt so far the question of issuance of the notice and the respondents taking decision after the applicant having crossed the age of 55. Mr. Bhatt has also submitted that the decision was

perverse as there was nothing against the applicant to conclude that he had ceased to be effective and was required to be removed from the service. According to Mr. Bhatt, the applicant was even given promotion after the age of 50 and when his services were found satisfactory to promote him, there was no reason for the respondents to pass an order of compulsory retirement on him. Mrs. Davawala, learned advocate for the respondents on the other hand has pointed out from the reply that there was more than sufficient material available with the authorities to conclude that the applicant was required to be retired in the public interest. Mrs. Davawala has pointed out that the applicant was reverted to HSG II when working as HSG I, P.M. Godhra on ad hoc basis on 28.12.89. Thereafter he was reported by S.P. Bardoli for careless working and incidents of carelessness was cited by the S.P. Bardoli in his letter dated 19.8.91 which go to show that he had lost the effectiveness. She has also pointed out that various punishments by way of withholding of increments were awarded on the applicant between 1990 and 1991 and none of these punishment orders was challenged by the applicant. The letter referred to by Mrs. Davawala of S.P. Bardoli, dated 19.8.91 states inter alia that "during the period the applicant officiated as Postmaster, Bardoli work of head office had gone from bad to worse and the pendency in almost all the branches have increased". According to her five cells were formed to wipe out the arrears in SB / SBCO branches and every time the cell cleared all the arrears but due to lack of Supervision and motivation on the part of the applicant, the accumulation of work had become the routine feature in all the branches. He has also

stated that the applicant was informed of his shortcomings and he was urged to improve his work but no improvement was noticed in his work. On the contrary the working had deteriorated to a very great extent. Thereafter he has gone on to recite incidents of non-clearance of work etc and the applicant not paying any heed to the request for the improvement. This letter coupled with the fact that applicant was inflicted with penalties every six months for showing negligence and carelessness in the work and also the fact that none of these punishments was challenged by the applicant clearly justifies the conclusion of the respondents that the applicant had lost the effectiveness and was nothing but a liability on the department. None of these orders passed against the applicant therefore can be said to be perverse or passed with mala fide intention. Applicant has contended that the adverse remarks were not communicated to him and that the attitude of S.P. Bardoli against him was quite prejudicial and with a mala fide intention of harassing him he had passed such remarks. There is however no material on record to support the contention of the applicant. If he found that the S.P. Bardoli was prejudiced against him and only with an intention of harassing him had passed certain remarks against him, he could have drawn attention of his superiors on this aspect. On the contrary his non-challenging of any of the punishment orders and not representing his case against the report made by S.P. Bardoli against him, suggests that the contention regarding the S.P being prejudicial against him is cooked up on after thought. No reason is given by the applicant as to why the S.P. should be prejudiced against him

except stating that because he belonged to Scheduled Tribe the SP was against him. The assertion of the applicant does not find support from any other quarter. There must be several other ST employees in the same division and the applicant has not been able to cite any incident of any other ST employee being harassed by the S.P. Bardoli. Under the circumstances, the reason given by the applicant for the allegation that he was being treated in a biased and prejudiced manner by the S.P. Bardoli cannot be believed and accepted.

8. For the reasons discussed above, we find that the order retiring the applicant prematurely from the services is not vitiated by any illegality or irregularity and that there was sufficient material available with the respondents to retire the applicant prematurely from the services. The impugned order is not vitiated by mala fides nor it can be said to be perverse or arbitrary. We find that it has been issued after taking into consideration the entire record of the service of the applicant. The O.A is therefore devoid of any merit and is dismissed with no order as to costs.

*G.C. Srivastava*  
(G.C. Srivastava)  
Member (A)

*A.S. Sanghavi*  
(A.S. Sanghavi)  
Member (J)

Mb

FORM NO. 21  
( See Rule 114 )

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

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Mr. C. H. Chastain

**APPLICANT(S)**

## VERSUS

**RESPONDENT (S)**

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Certified that the file is complete in all aspects.

Py 14.12.01

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Signature of S.O. (K)

Signature of Dealing Hand.