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CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH: CUTTACK.

Original Application No.12 of 1990.

Date of decision : November 3, 1992.

N.Kondal Rao. ... Applicant.

Versus

Union of India and others ... Respondents

For the applicant ... Mr. Biswajit Mohanty,
Advocate.

For the respondents ... Mr. L. Mohapatra,
Standing Counsel (Railways)

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C O R A M :

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. K. J. RAMAN, MEMBER (ADMN).

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? Yes.
3. Whether Their Lordships wish to see the fair copy of the Judgment ? Yes.

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JUDGMENT

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order dated 24.10.1989 compulsorily retiring the applicant from service.

2. Shortly stated, the case of the applicant is that he was appointed as a Junior Clerk under the South Eastern Railway and in the year 1964 the applicant was promoted to the cadre of Senior Clerk and in the year 1980 the applicant was given promotion to the post of a Head Clerk. In the year 1984, vide Annexure-7 the applicant was promoted to the post of Office Superintendent, Grade II. On attaining the age of 55 years the service record of the applicant was reviewed and the impugned order of compulsory retirement was passed which is under challenge.

3. In their counter, it was maintained by the respondents that since the applicant had a bad past record and his performance was poor, in public interest and in the interest of administration it was thought fit and proper that the applicant should not be retained in Government service any longer and therefore, compulsory retirement was ordered which is in noway unjust, improper and illegal. Therefore, the impugned order should be sustained and the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Biswajit Mohanty, learned counsel for the applicant and Mr. L. Mohapatra, learned Standing

Counsel(Railways) for the respondents at a considerable length.

5. During course of argument Mr. Mohanty submitted that from the year 1958 to 1984 at different spells (as indicated above) the applicant has been given promotion. Such promotions could not have been given if the applicant was found to be unfit - his performance being poor. After the authorities were satisfied about his competency and efficiency, the applicant was given promotion even to the post of Office Superintendent, Grade II. All and above this Mr. Mohanty submitted that in the month of February, 1988 vide Annexure-II the applicant was recommended to cross the efficiency bar and as a matter of fact he has crossed the efficiency bar. Once the applicant, in February, 1988, has been found to be eligible or efficient to cross the efficiency bar, it is not known as to how within a short period of 11 or 13 months the applicant's performance was found to be unsatisfactory and it was further found that the applicant should be compulsorily retired. Mr. Mohanty further submitted that in view of the data furnished above, the impugned order is arbitrary, illegal, unjust and improper.

6. On the other hand, Mr. L. Mohapatra, learned Standing Counsel(Railways) contended with vehemence relying on the entries made in the confidential character roll of the applicant as recorded on 13.9.1989 in respect of the years 1987 and 1988 stating that the performance was poor, compulsory retirement of the applicant on the basis of

these entries is fully justified and on no account it should be unsettled. We have given our anxious consideration to the arguments advanced at the Bar. The contention put forward by Mr. Mohapatra that the applicant was compulsorily retired owing to his poor performance exhibited during the years 1987 and 1988 does not find place in the counter. This fact also does not find place in the minutes of the Review Committee which contains the cryptic remark as stated hereunder:

" Sri N. Kondal Rao's performance is very poor, is not reliable as per Confidential reports and working performance. He is not fit to continue in service beyond 55 years of age."

These minutes have been recorded on 3.10.1989 whereas, at the cost of repetition, we may say that the entries in the confidential character rolls of 1987 and 1988 have been recorded on 13.9.1989. However, one striking feature cannot go unnoticed that in February, 1988 the applicant was found fit to cross the efficiency bar. This is undisputed. If the applicant was found to be fit to cross the efficiency bar in February, 1988 we fail to understand as to how his performance declined and was found to be poor within a period of one year. Of course a particular Officer performing well can have a deterioration in his performance but specific instances must be recorded to counteract the view already taken about his performance. There is no such record in existence and there is no such averment in the pleadings to ^{negate} the reasonings for which the performance became poor after he was found fit to cross the efficiency bar. There are plethora of

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judicial pronouncements ^{of} by the Supreme Court and different Benches of the Central Administrative Tribunal that once a person has been found fit to cross the efficiency bar it would not be proper to order his compulsory retirement soon thereafter unless specific instances are shown that in the mean while he has become inefficient.

7. In view of the aforesaid facts and circumstances we do not feel inclined to confirm the order of compulsory retirement - rather it is hereby set aside. The applicant is deemed to be in service from the date of compulsory retirement till he attains the age of superannuation which we understand has since come into force with effect from 30.9.1991. The applicant being deemed to be in service with effect from the date of compulsory retirement, necessarily he is entitled to all emoluments, which should be calculated and paid to him within 90 days from the date of receipt of a copy of this judgment. Necessarily consequential order which is to be passed is that retirement benefits of the applicant should be accordingly calculated, fixed and paid to him as per the observations of the Hon'ble Supreme Court, reported in 1991(16)ATC 930 (Sardul Singh vrs. Delhi Administration and others).

8. Thus, this application stands allowed leaving the parties to bear their own costs. *ASB*

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MEMBER (ADMINISTRATIVE)

VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
November 3, 1992/Sarangi.

