

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.533 OF 1993
Cuttack, this the 11th day of November, 1998

Prahallad Behera Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
11.10.98

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Prahallad Behera,
aged about 57 years
s/o late Banchhanidhi Behera,
Village/PO/PS-Balichandrapur, Dist.Jajpur.....Applicant

By the Advocates

- M/s D.R.Patnaik,
C.R.Kar,
K.C.Pradhan,
R.N.Nayak,
B.K.Mishra.

Vrs

1. Union of India, represented by
General Manager, S.E.Railway,
Garden Reach, Calcutta.
2. Divisional Railway Manager,
S.E.Railway, Kharagpur,
At/PO-Kharagpur, Dist..Midnapur (West Bengal).
3. A.O.M.(C),S.E.Railway,
At/PO-Kharagpur,
Dist.Midnapur (West Bengal) Respondents

By the Advocate - Mr.Ashok Mohanty

O R D E R

S. Som SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 9.6.1993 (Annexure-4) compulsorily retiring him from service and also for a declaration that he is continuing in service till date. He has also asked for consequential monetary and other benefits along with interest at 12%.

2. Facts of this case, according to the petitioner, are that he joined the Railways as Commercial Clerk on 4.9.1958. In 1962 after being selected by Service Commission he joined as a Guard in Kharagpur Division. During his service career, he discharged his duties to the satisfaction of all concerned. He has spotless and unblemished service career. On attaining the age of 55 years, his work was reviewed by the Railway administration and on being satisfied with his performance, he was allowed to continue upto 58 years of age. While working as Mail Guard, on 29.5.1993 he suffered from chest pain and high pressure. The fact of his illness was intimated by him to A.O.M.(C), Kharagpur, in his application dated 31.5.1993 (Annexure-1). The outdoor ticket and prescription given to him by the Doctor are at Annexures 2 and 2/1. On 11.6.1993 the applicant wrote to A.D.M.(C), Kharagpur (Annexure-3) indicating that he had been declared fit by the Railway Doctor in his memo dated 11.6.1993. But the applicant was not allowed to join and in the impugned order dated 9.6.1993 he was made to compulsorily retire under Clause II of Rule 2046 of Indian Railway Establishment Code, Volume II, after review of his service. Copy of the impugned order is at Annexure-4. The applicant states that as after his attaining the age of 55 years, his case was reviewed and he was allowed to continue upto 58 years of age, the impugned order is illegal and arbitrary and liable to be quashed on the ground of it having been issued without application of mind. The applicant has also submitted that the impugned order has been issued due to his absence for a few days on account of his illness and thus, the order has not been issued in public interest as it is required to be done under Rule

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2046. He has also stated that the notice of compulsory retirement dated 31.5.1993 was not served on him nor were his dues paid to him before the compulsory retirement and hence the impugned order is bad. He has also stated that the impugned order was passed on 9.6.1993 but was made effective from 5.6.1993 afternoon, i.e., with retrospective effect. On this ground also, the order is liable to be set aside. In the above context of the facts, the petitioner has come up with the prayers referred to earlier.

3. In their counter the respondents have denied the assertion of the applicant that his service record is spotless and unblemished. According to the respondents, during the last five years of service of the applicant, he had been punished time and again. He was placed under suspension from 20.9.1987 to 23.9.1987. His increment for a period of one year was stopped with non-cumulative effect in order dated 25.10.1989 as he failed to supervise his train which suffered an unnecessary detention at Howrah Station. He was also punished on 12.3.1990 by stoppage of one set of privilege pass as he failed to relight the tail lamp which caused detention of the train at Howrah Station. In order dated 24.8.1992 his increment was stopped for six months without cumulative effect for his failure to submit any medical certificate in support of his sickness although he was residing in Railway quarters. Another major penalty was imposed on him for his failure to light the tail lamp which caused detention of a train at Panskura Station. He was also chargesheeted vide order dated 16.3.1993 when he turned up for work even though he had earlier furnished a sick memo. Because of this, he wasted the service of a Guard who was booked for the same train. The respondents have further stated that the applicant was irregular in attendance and during the last five years he was on leave on account of

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sickness and had remained absent for 703 days which works out to more than four months in each of the five years. The respondents have stated that while the applicant was working as Mail Guard under Kharagpur Division, on his attaining the age of 55 years his service was reviewed by the Review Committee consisting of Additional Divisional Railway Manager, Kharagpur; Senior Divisional Operational Manager, Kharagpur and the Senior Divisional Personnel Officer, Kharagpur. After taking the entire service records of the petitioner into consideration, the said Committee recommended for premature retirement of the applicant from service. In pursuance of this, the Senior Divisional Operational Manager, Kharagpur, in his notice dated 31.5.1993 directed compulsory retirement of the applicant which was served on him on 5.6.1993 by the Divisional Operational Manager. The respondents have stated that the order dated 31.5.1993 was sought to be served on the applicant on 5.6.1993 by the Divisional Operating Manager in presence of three witnesses. But the applicant returned the order after going through the same and refused to receive the amount in lieu of three months' salary offered by the Clerk. These are borne out from Annexure-4 itself. The respondents have also stated that outdoor ticket enclosed by the applicant does not show the period for which he was advised rest and therefore, it cannot be claimed that he was not available in office on 5.6.1993. The respondents have further stated that as the first notice of compulsory retirement dated 31.5.1993 was refused by the applicant, the respondents had no other alternative except to issue the order at Annexure-4 compulsorily retiring him from service. The respondents have stated that the applicant has made false averments in his O.A. In the context of the above facts, the respondents have opposed the prayer of the applicant.

V.Som.

4. We have heard Shri D.R.Patnaik, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Panel Counsel appearing for the respondents, and have also perused the records. The learned counsel for the petitioner has filed a written note of argument along with citations with copy to the other side which has also been gone through.

5. It has been submitted by the learned counsel for the petitioner that the petitioner was absent for a few days because of his illness from 29.5.1993. He also intimated his official superior about his illness and enclosed the outdoor ticket and prescription. Thus, his remaining on leave from 29.5.1993 was due to circumstances beyond his control. But on this ground, he has been compulsorily retired. This contention of the learned counsel for the petitioner is without any merit and is rejected because from the impugned order itself it is clear that the compulsory retirement of the applicant has nothing to do with his absence from 29.5.1993.

6. The second ground urged by the learned counsel for the petitioner is that the order at Annexure-4 does not indicate that the applicant was made to retire compulsorily in public interest. In view of this, he has urged that the order at Annexure-4 is not sustainable. From the order at Annexure-4 it appears that the applicant was given notice for compulsory retirement in order dated 31.5.1993. The notice was sought to be served on him on 5.6.1993, but the applicant refused to accept the notice. The order at Annexure-4 is an order indicating that the notice dated 31.5.1993 is deemed to have been served on the applicant. In view of this, it is not necessary that in the order dated 9.6.1993 a. Annexure-4 which is an order for

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service of compulsory retirement notice on the applicant, it should be mentioned that he has been retired in public interest. In any case, action under Rule 2046 of Indian Railway Establishment Code, Volume II, compulsorily retiring a Railway servant before his attaining the age of superannuation can only be taken in public interest. Absence of the words "in public interest" does not invalidate Annexure-4 in any way.

7. The next point urged by the learned counsel for the petitioner that on his attaining 55 years of age, his service record was reviewed and he was allowed to continue upto the age of 58 years. The respondents in their counter have controverted this and have stated that on his attaining the age of 55 years, his case for determining whether he should be allowed to continue was considered by the Review Committee. The Review Committee considered his service career as a whole and took note of large number of punishments, major and minor, which have been imposed on him as also his irregular attendance in preceding five years. On that basis, the Committee decided to compulsorily retire him under Rule 2046. Thus, the respondents have controverted the assertion of the applicant that after completion of 55 years of age, his case was reviewed and he was allowed to continue. The applicant has not produced any document in support of his contention that his case was reviewed once earlier after he attained the age of 55 years, his service was found satisfactory, and he was allowed to continue. In view of this, it is not possible to accept the contention of the learned counsel for the petitioner. In any case, Rule 2046 of Indian Railway Establishment Code, Volume II specifically provides that the appointing authority has the absolute right to retire any railway servant in public interest after he has attained the age of 55 years. In view of this, the contention of the learned counsel for the petitioner is held to be without any merit and is rejected.

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8. It has been submitted by the learned counsel for the petitioner that the record of service of the petitioner was good. on 16.4.1989 the Railway administration congratulated him on his good work. Notwithstanding this the Review Committee had taken decision which is perverse. With regard to this contention, it has to be noted that the Tribunal does not act as an appellate authority over the Review Committee and cannot substitute its judgment for the decision arrived at by the Review Committee. The respondents in their counter have pointed out that the Review Committee took note of large number of punishments, both minor and major, inflicted on the petitioner in the preceding five years as also the fact of his irregular attendance. In view of this, the finding of the Review Committee cannot be held to be *prima facie* perverse or result of non-application of mind.

9. Learned counsel for the petitioner in his written note of submission has referred to the case of Bhim Singhji v. Union of India, AIR 1981 SC 269. This case relates to Urban Land Ceiling and Regulation Act, 1976 and has no application to the facts of this case. Similarly, another case referred to by the learned counsel for the petitioner in his written submission is Sushil Kaur v. Comptroller & Auditor General, 1996 (2) SLJ 27 (SC). This relates to question of payment of pro rata pension and is not relevant for the present purpose. The third case referred to by the learned counsel for the petitioner is S. Ramachandra Raju v. State of Orissa, AIR 1995 SC 111. In that case, the Hon'ble Supreme Court laid down that for exercising the power of compulsory retirement, the entire service record, character roll and confidential report have to be taken into consideration. In that case, the

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appellant, who was a Lecturer in a Government college, was compulsorily retired on the basis of adverse entry for the period 1.4.1987 to 29.2.1988. The remarks in his CR for years prior to this period and after this period were good. The Hon'ble Supreme Court held that the Review Committee and the Government should have taken into consideration the entire service record of the appellant which was not done. On that ground, the order of compulsory retirement was quashed in that case. It has been submitted by the learned counsel for the petitioner that the Review Committee had taken note of the service record of the petitioner only for the preceding five years. The respondents in their counter have specifically asserted that the entire service record of the applicant was taken into consideration. In their counter the respondents have no doubt mentioned the various punishments, major and minor, which were inflicted on the petitioner in the preceding five years. But this does not take away in any way from the assertion that his entire service record was taken into consideration by the Review Committee. This contention of the learned counsel for the petitioner is, therefore, held to be without any merit.

10. It has next been submitted by the learned counsel for the petitioner that the applicant was not given any prior notice before the order of compulsory retirement was issued. Learned Senior Panel Counsel appearing for the respondents has pointed out that the Hon'ble Supreme Court have laid down in the case of The State of Sikkim and others v. Sonam Lama and others, AIR 1991 SC 534, that principles of natural justice need not be followed while issuing the order of compulsory retirement. It is well settled that order of compulsory

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retirement is not a punishment. In view of this, the contention of the learned counsel for the petitioner is held to be without any merit. In any case, a notice dated 31.5.1993 was issued to the applicant which he refused to accept. Therefore, this contention is rejected as also in the context of the above fact.

11. Lastly, it has been urged by the learned counsel for the petitioner that the order at Annexure-4 is dated 9.6.1993 in which the applicant was made to compulsorily retire from an earlier date, i.e., 5.6.1993. Thus, this order was given retrospective operation. This contention is without any merit because this order dated 9.6.1993 was issued only because the applicant refused to accept the order dated 31.5.1993 retiring him prospectively from service with effect from 5.6.1993.

12. As regards the contention of the learned counsel for the petitioner that the applicant was not paid his dues, the respondents have stated in the counter and Annexure 4 bears it out that three months' salary in lieu of three months notice was offered to the applicant, but he refused to accept the same. The compulsory retirement of the applicant, therefore, cannot be challenged on the ground of non-payment of the notice period pay.

13. In the result, therefore, we hold that the applicant has not been able to make out a case for any of the reliefs prayed for by him. The application is held to be without any merit and is rejected but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM) 10/98
VICE-CHAIRMAN