

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO. 140 OF 1999

Cuttack, this the 14th day of October, 1999

Sudhir Kumar Patra

....

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  
*14/10.99*

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 140 OF 1999

Cuttack, this the 14th day of October, 1999

CORAM:

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

Sudhir Kumar Patra, aged about 57 years, son of late  
Padma Lochan Patra, At/PO-Pratap Pur, Via-Baliapal,  
District-Balasore

..... APPLICANT

Vrs.

1. Union of India, represented by the Secretary,  
Ministry of Communications, Government of India,  
New Delhi-110 001.
2. Director General, Posts, Dak Bhawan, New Delhi-110 001
3. Member (Personnel), Postal Board, Dak Bhawan, New Delhi-110 001
4. Director, Postal Services, Headquarters, Bhubaneswar-751 001.
5. Superintendent of Post Offices, Balasore Division,  
Balasore-756 001

..... RESPONDENTS

Advocates for applicant - M/s P.V. Ramdas  
P.V.B. Rao

Advocate for respondents - Mr. U.B. Mohapatra  
ACGSC

ORDER

*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 29.2.1996 (Annexure-2) retiring the applicant  
from service under FR 56(J) with effect from 30.6.1993.

2. The applicant's case is that his date of birth is 8.10.1942 and he joined Postal Department as Time Scale Clerk on 1.7.1963. In normal course he would have retired on 31.10.2000 on attaining the age of 58 years and after the age of superannuation has been increased to 60, he would have retired in 2002. While the applicant was working as LSG PA, Baliapal, he was chargesheeted on 11.12.1987 under Rule 14 of CCS (CCA) Rules, 1965 for submitting false TA Bill. After the enquiry the applicant was removed from service in order dated 24.4.1989. The order of removal was set aside by the appellate authority who ordered that the pay of the applicant be fixed at the lowest stage in time scale for five years and after expiry of five years he will be restored to his original position as it was at the time of removal from service. This order is dated 30.8.1989 and expired in July 1994. In July 1989 the applicant had completed twenty-six years of service and was entitled to be considered for promotion to HSG cadre under the Biennial Cadre Review Scheme (BCR Scheme). But he was not given the promotion and therefore he filed OA No. 506 of 1992, disposed of in order dated 25.6.1998 (Annexure-1). In the order dated 25.6.1998 the Tribunal noted that by July 1994 the punishment had spent itself and therefore the case of the applicant should have been considered after July 1994 for promotion to HSG cadre. In consideration of this, it was ordered that the respondents should take up the case of the applicant for consideration of his promotion to the HSG cadre with effect from July 1994 and pass appropriate orders within a period of 120 days from the date of receipt of copy of the order. Before issue of this order by the Tribunal,

J. Sam.

(Annexure-2)

in order dated 29.2.1996 the applicant was retired from service under FR 56(J). The applicant has filed a representation to Member (Personnel), Postal Board, vide Annexure-3, but he was informed in an order dated 27.9.1996 at Annexure-4 that his appeal has been rejected. Thereafter the applicant submitted a memorial to the President of India on 16.7.1998 (Annexure-5) but received no reply. He also submitted a representation to Minister, Communication through the Member of Parliament. The forwarding letter of the Member of Parliament is at Annexure-6. But the applicant has not heard anything thereafter. Therefore the applicant has approached the Tribunal with the prayer referred to earlier.

3. Respondents in their counter have mentioned about initiation of proceedings against the applicant for making false claim of LTC, imposition of penalty of removal from service on him, and modification of the punishment to reduction to lowest stage of his scale of pay for five years by the appellate authority. The respondents have further stated that by virtue of the appellate order the applicant rejoined the service on 6.9.1989 and the punishment order was therefore effective for five years thereafter upto 5.9.1994. It is stated that on completion of twenty-six years of service, the applicant was due for promotion to HSG cadre under BCR Scheme on 1.7.1989. But he could not be promoted from July 1989 because he was removed from service from 5.5.1989 by virtue of the order of the disciplinary authority. On his rejoining on 6.9.1989 by virtue of the appellate order, his case for promotion could not be considered till 5.9.1994 for a period of five years when the punishment was current. He was due

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for promotion to HSG cadre on 1.1.1995 on completion of the punishment period. But he was again chargesheeted under Rule 16 of CCS (CCA) Rules, 1965 in memo dated 5.12.1994 for committing misappropriation of Savings Bank deposits at Pratappur Sub-Post Office. On finalisation of this proceeding he was punished with withholding of promotion for a period of one year in order dated 30.12.1994. Thereafter the applicant was served with notice under FR 56(J) in memo dated 29.2.1996 which was delivered to him on 4.3.1996 and the applicant was relieved from service on 5.6.1996 on completion of three months notice from 4.3.1996. The respondents have stated that the compulsory retirement of the applicant under FR 56(J) has been done in accordance with the rules and the order is legal. The respondents have also stated that in compliance of the judgment dated 25.6.1998 in OA No. 506/92 a Review DPC was held on 11.5.1999 to examine the case of the applicant for promotion to HSG cadre but he was not found fit for promotion taking into account his service record. On the question of representation filed by the applicant against his compulsory retirement, it has been stated that the representation of the applicant was rejected by the Representation Committee at the Directorate and the respondents are not aware about submission of memorials by the applicant to the President of India and the Minister, Communication. The respondents have further stated that the case of the applicant has been considered strictly in accordance with the provisions of FR 56(J) and he has been compulsorily retired in public interest taking into account the overall career of the applicant and all material facts. On the above grounds, the respondents have opposed the prayer of the applicant.

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4. We have heard Shri P.V.Ramdas, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents and have also perused the records.

5. In support of his submissions the learned counsel for the petitioner has relied on the following decisions:

- (i) State of Gujarat and another v. Suryakant Chunilal Shah, 1999 SCC (L&S) 313;
- (ii) V.E.Mohamed Ibrahim v. Union of India, OA No.113/93, decided by the Madras Bench of the Tribunal on 26.11.1993;
- (iii) Baldev Raj Chadha v. Union of India and others, AIR 1981 SC 70; and
- (iv) Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another, AIR 1992 SC 1020.

For the purpose of deciding this OA it is not necessary to refer to the facts of each of these cases cited. It is only to be noted that in the case of Suryakant Chunilal Shah (supra) the Hon'ble Supreme Court upheld the decision of the Hon'ble High Court setting aside the order of compulsory retirement. In that case the respondent was chargesheeted for issuing bogus cement permits to non-existent firms and FIR was also lodged against him. The respondent prayed for revocation of the suspension order but that was not done. Ultimately the respondent was compulsorily retired under the relevant rule of Bombay Civil Services Rules, 1959. His writ petition was dismissed by the Single Judge but was allowed by the Division Bench on appeal leading to the State Government approaching the Hon'ble Supreme Court in the case. In this case during the pendency of the proceedings and FIR and investigation the respondent was compulsorily retired. It was noted that there

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was no material before the Review Committee inasmuch as there was no adverse entry in the Character Roll. It was held that the order of compulsory retirement, in the circumstances of the case, was punitive in nature. In the instant case the applicant has been imposed with punishment in disciplinary proceedings before his case for compulsory retirement was taken up and therefore this decision has no application to the facts of the instant case. In the case of V.E.Mohamed Ibrahim (supra), the Madras Bench of the Tribunal held that the retirement on the sole ground that the applicant has been visited with a minor penalty in disciplinary proceedings, without considering his overall performance or any other circumstances, is in effect a camouflage for a fresh order of punishment on the same charge and was therefore held to be illegal. In the case of Baldev Raj Chadha (supra) it was held that an officer who continued in service for fourteen years crossing the Efficiency Bar and reaching the maximum salary in the scale and with no adverse entry at least for five years immediately before retirement, could not be retired on the ground that long years ago his performance had been poor although his superiors have allowed him to cross the EB without any objection. The order of compulsory retirement was quashed in that case because vital material relevant to the decision had been ignored and obsolete material, less relevant to the decision, had influenced the decision of compulsory retirement.

6. In the classic case of Baikuntha Nath Das (supra) and in many cases thereafter decided by the Hon'ble Supreme Court and the Hon'ble High Courts, it is well settled



that the order of compulsory retirement can be passed by Government on forming an opinion that it is in public interest to retire the Government servant compulsorily. It is also well settled that the entire service record has to be considered before taking a decision in the matter, attaching more importance to record of performance during the later years. The case of the applicant can be considered in the context of the above well settled position of law.

7. The first point of the applicant is that he could not have been retired while his case was pending before the Tribunal. As earlier noted the applicant approached the Tribunal in OA No.506/92 for considering his case for promotion under BCR Scheme. The respondents in their counter pointed out how his case could not have been considered immediately on completion of 26 years of service on 1.7.1989 because by 5.5.1989 he was removed from service by way of punishment. On his coming back to service on 6.9.1989 with the reduced punishment of reduction to lower stage for a period of five years obviously his promotion could not be considered till 5.9. 1994 during the currency of the punishment. His case was due to be considered with effect from 1.1.1995 but he was again chargesheeted on 5.12.1994 and again another punishment was imposed on him. The respondents have also stated that in a meeting held on 11.5.1999 his case for promotion to HSG cadre was considered but the Review DPC did not find him fit for promotion taking into account his entire service record. From the above recital of facts it is clear that pendency of his case for promotion to HSG cadre from a prior date has nothing to do with his compulsory retirement under FR 56(J). The two actions are independent of each other. Therefore, this ground is held to be without



any merit and is rejected.

8. It is further submitted by the learned counsel for the petitioner that a Government servant can be compulsorily retired under FR 56(J) only in public interest after taking an overall view of his service record. It is submitted that in the facts and circumstances of the case it is clear that the decision to retire the applicant has been made without application of mind and no public interest is involved in his retirement. We are unable to accept the above contention because the respondents have stated that the relevant Committee considered the overall career of the applicant and his records and decided to compulsorily retire him. The fact that he was visited with two punishments in his service career cannot be taken to be irrelevant matter moreso when the later punishment for committing frauds in Savings Bank Account has been imposed on him recently. But the order of compulsory retirement has come after the punishment has been imposed and on the basis of reviewing his entire service record and therefore it cannot be said that because of his past proven misconduct for which he was punished, he has again been compulsorily retired. It is also to be noted that compulsory retirement is no punishment and in the circumstances of the present case it cannot be held that the order is punitive in nature.

9. In the result, therefore, we hold that there is no infirmity in the order of compulsory retirement of the applicant and the Application is held to be without any merit and is rejected but without any order as to costs.

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

(SOMNATH SOM)  
VICE-CHAIRMAN  
14.10.79