

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....
Date of order : 07.03.2000

O.A.NO. 511/1995

Ghanshyam Bhagwat S/o Shri Bhagwan Bhagwat, aged about 56 years, R/o of Railway Bungalow No. L-63-A, Railway Colony, Abu Road, last employed on the post of Junior Foreman in Diesel Shed, Abu Road.

.....Applicant.

versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Ajmer Division, Ajmer, Western Railway.
3. Senior Divisional Mechanical Engineer (Diesel Shed), Abu Road, Western Railway.

.....Respondents.

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CORAM :

Hon'ble Mr.A.K.Misra, Judicial Member

Hon'ble Mr.Gopal Singh, Administrative Member

.....
Mr.J.K.Kaushik, Counsel for the applicant.

Mr.S.S.Vyas, Counsel for the respondents.

.....
PER HON'BLE MR.A.K.MISRA,JUDICIAL MEMBER:

The applicant had filed this O.A. with the prayer that the impugned order dated 4.1.95 (Annex.A/1) issued by the 3rd respondent ordering applicant's premature retirement and impugned order dated 7.8.95 (Annex.A/2), rejecting the representation of the applicant be declared illegal and be quashed. The applicant be allowed all consequential benefits as if no such adverse orders were passed against him.

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(V)

2. Notice of the O.A. was given to the respondents who have filed the reply in which it is stated that the applicant's service record was reviewed on his attaining the age of 55 years as per rules. The applicant was found fit to be prematurely retired and consequently the applicant was retired vide impugned order Annex.A/1. It is also stated by the respondents that no case has been made out for interference in the impugned orders by the applicant, therefore, the O.A. deserves to be dismissed.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. The applicant, who was appointed on 30.10.63 completed 30 years of his service on 30.10.93. The applicant, whose date of birth is 1.7.39 completed 55 years of age on 1st of July, 1994.



5. The applicant has challenged the impugned order retiring him compulsorily on the grounds that review for his premature retirement has not been carried out according to the time schedule provided in the instructions; that he has been retired on ground of adverse entries in his C.R. against which his representation was pending and such entries were not final as against him and he has not been paid full pay and allowances in lieu of three months notice. The payment was short by 300/- rupees. Hence, the impugned punishment order deserves to be quashed.

6. We have considered the rival arguments of the learned advocates for the parties. It is stated by the respondents that as against the adverse entries communicated to the applicant for the years 1991 and 1992 the applicant made no representation, therefore, it cannot be said that uncommunicated adverse entries were taken into account in reviewing his case. It is also stated

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by the respondents that adverse entry for the year 1993 against which the applicant had represented remained as it was because the applicant's representation was rejected. In our view, there is nothing on record to suggest that the applicant was prematurely retired taking into account uncommunicated adverse entries. It is settled law that while reviewing the cases of candidates for further continuance in service or for compulsory retirement the subjective satisfaction of the reviewing committee is to be taken as final and the Courts are not required to substitute their decisions in place of that of review committee. Such order can only be interfered with if the same is not based on proper assessment of ACRs. In this case no such lapse has been pointed out to us. In 1995 (2) SLR 754 - The Chief General Manager, State Bank of India, Bhubaneswar and Ors. Vs. Suresh Chandra Behera, the Hon'ble Supreme Court has stated as under :-

 "Constitution of India, Articles 14, 16, 226 and 311 - State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979, Paragraph 19(1) - Writ Jurisdiction/Compulsory retirement - Compulsory retirement of Branch Manager of Bank after examination of the service record by Reviewing Committee-Performance as Branch Manager had not been satisfactory-His initiative had also held to be an average-Order of compulsory retirement cannot be faulted-High Court cannot examine for itself the service record and substitute its own judgment for the judgment of Reviewing Committee."

7. In view of the above, we do not find that the order of compulsory retirement of the applicant is required to be interfered with on the ground that his ACRs were not that bad so as to compulsorily retire him.

8. This is an admitted position that while delivering the amount for notice period the applicant was paid 300/- rupees less than were due to be paid. This amount was subsequently paid to the applicant, as is mentioned in the reply. On the basis of these facts, it was argued by the learned counsel for the

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applicant that the order of applicant's compulsory retirement is bad in law and cannot be given effect to for purposes of depriving the applicant from further continuance in service till his normal date of superannuation. He has cited 1989 (3) SLJ CAT (Hyderabad Bench) 240 in which it was held that "non payment of full amount simultaneously with order rendered action illegal hence was set aside." But, in our view, the principle laid down in the aforesaid ruling does not help the applicant. In the case of State of Orissa Vs. Balakrushna Sathpathy reported in 1993 (8) SLR SC 395 - it was held as under :-

"The Rule requires three months prior notice to be given or payment of three months' pay and allowances in lieu of such notice. In other words, the alternative mode prescribed of payment of the amount in lieu of three months notice, when adopted, entitles the Government servant to get that amount, but the validity of the order of compulsory retirement does not depend on its prior full payment as a pre-requisite. The only right of the Government servant under such an order is to get the amount of three months pay and allowances in lieu of such notice, and no more."

In view of the above principle short payment of 300/- rupees in the amount of three months notice pay together with the order retiring the applicant compulsory, does not vitiate the retirement order. Moreover, the amount which he was otherwise entitled to receive was subsequently paid to him. Therefore also the applicant cannot take advantage of the fact of such short payment which in our opinion appears to be a clerical mistake of calculation. In view of the principle laid down in the afore cited ruling, non compliance of the Rule 1802(a) of the Indian Railway Establishment Manual, does not help the applicant. We have also considered the aspect of reviewing the case of the applicant for purposes of retention in service/compulsory retirement. As per the date of birth of the applicant as mentioned in the O.A. the applicant had completed 55 years of age only on 1.7.94. The case of the applicant was first time reviewed only in the month of Sept'94 and consequent orders followed thereafter. It cannot be interpreted that if the case of the

applicant had not been reviewed earlier than he attained the age of 55 years, then subsequent review was in violation of the rules and guidelines. All what is necessary is that either soon before or soon after the applicant attained the age of 55 years his case should be reviewed which in the instant case has been done and he has been found fit by the concerned authorities for compulsory retirement. Therefore, the applicant cannot take any advantage by arguing that review of his case was not done as per the time-table given in the guidelines issued on the subject. In the case of Govind Singh Bapna vs. Union of India and Others, reported in 1994 (3) CAT SLJ 36, it was held as under :-


 "The word used is "after" in the Rule (2046 R-II, Ed). The Rule provides that the Railway servant can be retired "after" he has attained the age of 50/55 years. The provision in the rule is regarding when the government servant is retired. The rules do not provide when the case for retirement should be reviewed. The guidelines issued by the Ministry for the purpose of enforcement of the rule cannot be equated with the rule if we consider the purpose and intention behind issuing of the guidelines. The intention in issuing the guidelines is that the cases of the Railway servant should be taken up for review well before they attain the age of 50/55 years so that if they are not fit to be retained in service they are not allowed to continue beyond the age of 50/55 years. The guidelines issued cannot be interpreted in such manner that these frustrate the purpose behind framing the rule and the guidelines themselves."

10. Thus, in our view, the impugned order of compulsory retirement Annex A/l is not liable to be interfered with. The applicant has not been able to make out any case. The O.A. deserves to be dismissed. The O.A. is, therefore, dismissed. The parties are left to bear their own costs.

Gopal Singh

(GOPAL SINGH)
Adm. Member

8/IV/2020

(A.K.MISRA)
Judl. Member

Part II and III
S.E. 30.06.06

R/Com
a 10/3/06
2/10/06
S.E. 30.06.06

Part II and III destroyed
in my presence on 9.10.06
under the supervision of
section officer (1) as per
order dated 23/8/06

Section officer (Record)