

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 100/2005

Date of Order: 25-3-2010

**HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER
HON'BLE Mr. V.K. KAPOOR, ADMINISTRATIVE MEMBER**

S.D. Paliwal S/o Shri Bulidan Paliwal, aged 58 years, R/o G 236 Shastri Nagar, Jodhpur at present retired as SPM Udaimandir Post Office Jodhpur, Jodhpur.

....Applicant

Mr. S.K. Malik, counsel for applicant.

VERSUS

1. Union of India, through Secretary Department of Posts, Ministry of Communication Dak Bhawan, New Delhi.
2. The Post Master General, Rajasthan West. Region, Jodhpur.
3. The Senior Superintendent of Post offices, Jodhpur.

....Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, Counsel for respondents.

ORDER

(Per Hon'ble Mr. V.K. Kapoor, Administrative Member)

Shri S.D. Paliwal has filed the present OA against orders of respondent no.3 dt 25.5.2004 (Ann.A-1) and 20.11.2003 (Ann.A-

2). The applicant has sought the reliefs that are as follows:-

1. That the impugned orders in Annex.A-1 and Annex.A-2 may kindly be quashed with all consequential benefits.
2. Interest @ 15% on pay and allowances of the period intervening may kindly be allowed to mitigate the hardships faced by the applicant.
3. The period after compulsory retirement may be treated as period spent on duty for all purposes.
4. Cost of this application along with any other order, direction or relief, which may be considered just and proper in the facts and circumstances of the case, may kindly be allowed in favour of the applicant."

2. The factual matrix of the case is that the applicant was appointed as Postal Assistant on 31.10.1965 in the department of Posts. Applicant's version is that he was serving very efficiently and honestly but he did not fall in line with dishonest and corrupt

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malpractices of his senior officers. While the applicant was posted at Jaisalmer, he was manhandled & beaten by disciplinary officer & others; a criminal case was filed by him on 17.9.1982 (Ann.A-3). The applicant constructed a House at G-236 Shastri Nagar, Jodhpur, he took a house building advance from department, this matter was exploited by respts. The OA no.408/1991 (Ann.A-5) filed by him was accepted, major penalty was quashed by CAT, Jodhpur. He was compulsorily retired on 05.02.1996. His appeal was rejected but in revision petition on 08.11.1996 (Ann.A-8) with the same punishment, reduction by five stages for a period of 03 years was maintained but he was reinstated in service. He was posted at pratap nagar delivery postoffice, Jodhpur where he worked from 14.8.1998 to 06.5.2002, later he was transferred to Udai Mandir, Jodhpur. During this period, he aligned himself as honorary secretary of anti-corruption council on 16.6.1998, he indulged in making complaints against departmental employees, officers etc. He was awarded two minor punishments for raising/ reporting matters of officers' corruption; he was not given TBOP and BCR promotion scheme on completion of 16 and 26 years service respectively, on the excuse of such minor punishments. Later, TBOP promotion was given on 27.6.2002 w.e.f. 31.10.2000 (Ann.A-12). He was badly harassed and transferred to Ramgarh (Jaisalmer) 500 km away from Jodhpur. The applicant approached CAT, Jodhpur for cancellation of transfer in OA No.102/2003 which was rejected, then he moved the Chief P.M.G., Jaipur but his representation against transfer was rejected on 28.8.2003 (Ann.A-16). He moved to Member (Personnel) Postal Services Board, New Delhi on 11.9.2003 (Ann.A-17); his representation for

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cancellation of transfer was rejected. He was retired by respts. under clause-J of F.R. 56 on 24.11.2003 by order dt 20.11.2003 (Ann.A-2). He has made a request to cancel the retirement order and give all consequential benefits etc. to him from back date.

3(a) Learned counsel for respondents in reply stated that applicant's service record was quite unsatisfactory and his conduct was unbecoming of a Government servant. The applicant submitted false application for house loan, concealed some facts in regard to constructing his house and received payment to the tune of Rs.7600/-. A disciplinary action was taken against him, he was censured on several occasions but there was no improvement in his behaviour. His entire service record was unsatisfactory, there were public complaints against him for his rude behaviour; he was warned verbally during service period. He was in habit of using whimsical language with his senior officials. He was awarded penalty of withholding of his next promotion for one year vide order dt 31.3.2001. His service record has been quite unsatisfactory, he was not recommended for promotion. Even then, he was given TBOP but BCR promotion was not given. The applicant's representation dt 11 Sep,2003 addressed to Member (Postal) New Delhi was forwarded to the Regional Office, Jodhpur vide office letter dt 22 Sep, 2003. He addressed letters to the Cabinet Secretariat etc. for redressal of his grievances. Because of his habit of corresponding with the higher ups and leveling allegations against the senior officers etc. made him venerable. Thus, under clauses (j) of the FR-56, he was retired from services (Ann.A-2); action taken against him was basically right.



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3(b). In rejoinder, applicant has mentioned about his efficiency, workmanship, punctuality and honesty. As he was not serving the vested interests of respts, he was given adverse remarks, minor punishments censure & stoppage of increments etc. No recovery of Rs.800/- was due from him, second instalment of the house building allowance was never given to him. He tried to do justice with the job assigned to him; his allegations were not refuted by higher authorities. The question of withholding of promotion for 02 years on 28.01.1992 was unjustified. His service record was basically good and unblemished. Due to victimizing attitude of senior officers; he was subjected to unwanted harassments. The respts could not take legal action against him for the complaints engineered by him. He was not given second upgradation even after completion of 26 years of service; it does not give to respondents' right of his premature retirement. As per applicant, the charges leveled against him are baseless and concocted.

4(a). Learned counsel for applicant while arguing stated that he was badly harassed, he was hard working & good integrity. He was not given due promotions; only TBOP is given once. He was indicted for small and flimsy grounds, like censure etc., his affiliation with the anti corruption council should not have landed him in trouble; his motto was to expose the corrupt practices of senior officers. He was transferred to a distant place Ramgarh (Jaisalmer), about 550 kms away from Jodhpur. (The senior officers, CAT Jodhpur etc. did not shower any mercy on him.) Ultimately, under clause (J) of rule 56 of FR, he was retired from service on 20.11.2003. His representation to respdt 3 was also rejected. He was retired prematurely; more than 02 years of

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service was left in his retirement, thus retiring him for no fault of his, was unjust & improper. Applicant has relied upon the citations of the apex Court (1996) 3 SCC 619, (1996) 5 SCC 103, (1992) 2 SCC 299 and (2005) SCC (L&S) 728. Besides, he has also quoted (1998) 37 AT Act 408 for consolidating his claims.

4(b). Learned counsel for respondents while narrating the facts at length, stated that punishment accorded to the applicant was just and proper. The behaviour of the applicant was unacceptable and unbecoming of a Government servant. He was in habit of using intemperate language with senior officers. He was censured on several occasions but there was no change in his conduct. There were many public complaints against him for rude behaviour, he was warned verbally several times. His promotion was withheld for one year vide memo dated 31 March, 2001. His service record was of average standard or below the mark. The respondent 3 has made a written mention of irregularities committed by the applicant while he was posted as SPM Pratap Nagar, Jodhpur; even then was given TBOP by the review committee. He was mostly involved in one or other acts of indiscipline. Thus his retirement under rule 56 (J) F.R. was basically right.

5. Applicant was an employee in postal department, appointed in 1965, transferred to many places during his service period. He was posted at Jaisalmer during 1981-82 where he was beaten & manhandled by the disciplinary officer & others; for this a criminal case was filed by him; he was charge sheeted. There were allegations of misappropriating house building loan advance of Rs.7600/- . He was in habit of corresponding with senior officers

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directly, lodged complaints against them. In house building loan advance case, respondents inflicted penalty of reduction of pay by five stages for a period of three years reduction of increment of pay. The matter went up to Member (P) Postal Service Board where the order of compulsory retirement was revoked, date of reduction of pay by five stages for the period of 03 years. He moved to CAT, Jodhpur in OA no.408/1991 against the order of compulsory retirement, which was accepted vide order dt 08.11.1993 (Ann.A-5) by which reduction of five stages for a period of 03 years was set aside. He was transferred from pratap nagar to Udaimandir Post office, Jodhpur later.

6. The applicant got closer links with anti corruption council, a private body at Jodhpur where he was nominated as honorary secretary. His so called involvement in this body made him controversial as he used to write at higher level and leveled frivolous allegations against senior officials. The senior supdt. of post office, Jodhpur Division inflicted penalty of censure upon him on 03.3.1999. The respondents gave him TBOP vide order dt 27.6.2002 w.e.f. 31.10.2000 but after completion of 26 years of service, BCR and further promotions were not given to him due to his poor service record. He was transferred to Ramgarh area of district Jaisalmer from Jodhpur on 25.4.2003 (Ann.A-14). He moved to CAT, Jodhpur Bench in OA 102/2003, which was dismissed vide order dt 17.6.2003 but authorized him to move to senior officers for transfer cancellation etc. He kept on writing and sending representations at the highest quarters but in vain. The Chief P.M.G. Jaipur rejected his representation against transfer & strictly warned him against raising unwarranted and baseless

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allegations against senior officers (Ann.A-16). He was retired under clause (J) of rule-56 of F.R. dt 20.11.2003 (Ann.A-2), his efforts for revocation of this order were of no avail. His conduct was unbecoming of a Govt. servant; he was censured & given punishment on several occasions. No distinct change in his rude behaviour was perceptible; charges against him could not be proved due to non-availability of documentary proof. He used objectionable and intemperate language in official communication which was against Government servant's conduct. Because of his bad service record, he was not promoted, only once he was given TBOP by way of adopting lenient view. His deep involvement in the affairs of anti corruption council landed him in trouble; he attracted public ire on this account. The senior officers of the department warned him times again but it was practically of no avail. He worked more as honorary secretary of anti corruption council and used to make complaints against the senior officials; he was retired prior to his superannuation by respondents. The rejoinder given by the applicant is not supportive; there were serious charges of indiscipline against him. His habit of making complaints made him controversial and created problems for his service career. Thus, action under clause (J) of rule-56 of F.R. was taken against him; his service record was below the mark.

There is no justification to interfere into the action taken by respts on 20.11.2003 (Ann.A-2) as regards his removal from service.

7. Learned counsel for the applicant has relied upon citations of the apex court, namely Narasingh Patnaik vs. State of Orissa (1996) 3 SCC 619; Sukhdeo vs. Commissioner Amravati Division, Amravati & Anr. (1996) 5 SCC 103 that speaks of public interest

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in matters of retirement; but in the present case, the orders passed by the respondents do not suffer from inconsistency or lack bonafides. The applicant's service record was not good consistently, thus both these citations would not come to his rescue. There are no malafide intent in applicant's case nor the order is arbitrary, due thought is given to his representations. It is basically applicant's rude behaviour and complaining nature which were responsible for his retirement. The apex court's rulings Pritam Singh vs. Union of India & ors. 2005 SCC (L&S) 728 and Baikuntha Nath Das & Anr. Vs. Chief District Medical officer, Baripada & Anr. (1992) 2 SCC 299 do not support him as he was given sufficient time to bring an improvement in his conduct. An order of compulsory retirement does not amount to punishment; hence principle of natural justice is not required to be observed technically while passing an order of compulsory retirement. He would not get relief from Tribunal's ruling Bheem Raj Meena & Ors. vs. Union of India & Anr (1998) 37 ATC 408 because his service record was consistently average. The orders of respondents are not malafide or arbitrary and are based on proper evidence. Thus, there is no need for any judicial scrutiny.

8. In the light of deliberations made above, no interference is called for in the orders dated 20.11.2003 (Ann.A-2) and 25.5.2004 (Ann.A-1). Resultantly, the present OA is hereby dismissed. No order as to costs.

Upon
(V.K. KAPOOR)
ADMINISTRATIVE MEMBER

W.B.
(Dr. K.B. SURESH)
JUDICIAL MEMBER

hgc
S. Kamalika
fsw
5/4/10

दिनांक 17/2/15 के आदेशालु सार
सेवी उपलिख्चन 10/2/16
को छापा दिया गया ।

अनुमान अधिकारी
कानूनीय प्रशासनिक अधिकारक
जोधपुर न्यायपाल, जोधपुर

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