

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00203/2015

Reserved on : 16.05.2016

Jodhpur, this the ^{23rd} day of May, 2016

CORAM

Hon'ble U. Sarathchandran, Judicial Member

Hon'ble Ms Praveen Mahajan, Admn. Member

Tej Mal Bhambhi S/o Shri Magan Lal aged about 55 years, R/o Mehrumi Gate, Gali No. 7, Gangapur, District Bhilwara. Presently working on the post of Postman, Head Office, Bhilwara (Raj.).

.....Applicant

By Advocate: Mr S.K. Malik.

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan Southern Region, Ajmer.
3. The Superintendent of Post Offices, Bhilwara Division, Bhilwara.

.....Respondents

By Advocate : Mr B.L. Tiwari.

ORDER

Per U. Sarathchandran

The applicant joined the services of the respondents as Extra Departmental Mail Carrier (EDMC) on 26.09.1987. He took part in the departmental examination for the selection to the post of Postman and he came out successful. He was sent for training

on 27.10.1995. After completion of the training, he was appointed as Postman on 17.11.1995. He was confirmed in the post of Postman after probation, on 17.11.1997 vide Annex. A/4 order. Later, in 2005, he was served with a charge sheet for disciplinary proceedings under rule 14 of CCS (CCA) Rules, 1965. He was removed from service on 09.01.2007. On appeal, the appellate authority vide Annex. A/5 order changed the punishment of removal from service to reduction of pay to the lowest scale for a period of 05 years permitting him to draw increments regularly. Since the penalty was in currency, he was initially not granted 1st MACP on the due date. However, later, on completion of 10 years' service, he was granted 1st MACP vide Annex. A/7. The respondents conducted review of premature retirement cases for the quarter ending 31.03.2015 where they found that the applicant with unsatisfactory service particulars and that he was absent from duty without information and hence he was not fit for retention in service. Based on the assessment of the review committee, the respondent No. 3 issued Annex. A/1 order invoking the powers under clause (j) of Rule 56 of the Fundamental Rules (for short, FR) and ordered that he shall retire from service on the forenoon of 26.06.2015. Being aggrieved by this, the applicant sent Annex. A/9 and A/10 representations. Accordingly to the applicant, the impugned Annex. A/1 order is violative of the Consolidated

premature retirement of Central Govt. Servants under Rule 56 (j) of FR and under Rule 48 of CCS (Pension) Rules, 1972 or CSR 459 (h), a copy of which is marked as Annex. A/11. The applicant prays for the relief as under:

- (i) *By an appropriate writ, order or direction, impugned order dated 27.03.2015 at Annex. A/1 be declared illegal and be quashed and set aside as if same was never passed against the applicant.*
- (ii) *By an order or direction, respondents may be directed to continue the applicant in service with all consequential benefits till he attains the age of superannuation.*
- (iii) *Exemplary cost be imposed on respondents for causing undue harassment to the applicant.*
- (iv) *Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.*

2. Respondents resisted the OA by contending that with a view to improve the efficiency and to strengthen administrative machinery at all levels, the Government have the absolute power to retire a Govt. Employee in public interest before his normal date of retirement on attaining a specified age or on completing a specific length of service. According to the respondents, the review committee which met on 19.03.2015 considered the cases of officials of Group 'C' staff of Rajasthan Southern Region, Ajmer who have attained the age of 55 years or completed 30 years service between the period from 01.01.2015 to 31.03.2015. Based on confidential reports and available material on record the review committee found the applicant to be not fit for retention in service due to unsatisfactory service record and absence from

overall service record of the applicant was taken into consideration by the review committee and found that he is not fit to be retained in service in public interest.

3. The respondents have also produced a copy of the service records pertaining to the applicant. We have heard Mr. S.K. Malik, Ld. Counsel for applicant and Mr. B.L. Tiwari, Ld. Counsel for respondents. Perused the record.

4. Mr Malik assailed Annex. A/1 order mainly on the ground that it is not an order stating the reasons. He further submitted that the applicant could get the reasons for premature retirement under FR 56 (j) only on submitting an application under RTI Act, 2005. He submitted that Annex. A/8 is the document the applicant has received by invoking the provisions of RTI Act, 2005 which alone has divulged the reason for premature retirement of the applicant.

5. It would be advantageous quote the relevant portion of FR 56 (j) invoked by the respondents for issuing Annex. A/1 order of premature retirement of the applicant. It reads :

"56(j) Notwithstanding anything contained in this rule, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice:

- (i) *If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government Service before attaining the age of 35 years, after he has attained the age of 50 years;*
- (ii) *in any other case after he has attained the age of fifty-five years."*

A reading of above afore quoted portion in the FR indicates that if the appropriate authority is of the opinion that it is in the public interest to retire a Govt. Servant, such authority has absolute right to do so. It is pertinent to note that public interest is the primary concern for issuing an order of premature retirement by invoking FR 56 (j).

6. Mr Malik referred to Annex. A/11 copy of the instructions relating to premature retirement of Central Govt. Servants. Para 4 of Part II of the aforesaid instructions under the caption 'Criteria, Procedure and Guidelines' reads:

(4) The appropriate authority shall take further action for the recommendations of the Committee. In every case, where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule(s), the appropriate authority should record in the file that it has formed its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule(s) in the public interest. In case of Union of India versus Col. J.N. Sinha, the Supreme Court had observed that "it is in public interest to retire the officer in exercise of the powers conferred by that provision and this decision should not be an arbitrary decision or should not be based on collateral grounds".

- (5) The rules relating to premature retirement should not be used-
- (a) to retire a Government servant on grounds of specific act of misconduct, as a short-cut to initiating formal disciplinary proceeding; or
 - (b) for reduction of surplus staff or as a measure of effecting general economy without following the rules and instructions relating to retrenchment

Mr Malik argued that Annex. A/11 instructions relating to premature retirement of Govt. Servant have been issued by Govt. Of India in order to fill in the gaps in FR 56 (j) and therefore, in the absence of any further rules on the subject, the administrative instructions are to serve as a statutory rule, to be observed strictly in all cases of premature retirement.

7. Mr Malik further argued that remarks in the Confidential Reports of the applicant relied on by the respondents for issuing the impugned Annex. A/1 order, were not communicated and therefore, the respondents should not have used such records for coming to the conclusion that the applicant is not fit for continuance in service. In this connection, he referred to a judgment of the Delhi High Court in *Union of India v. Shyam Shiva Prasad* 1979 SLJ Vol. 7 p. 684, a decision of the Supreme Court of India in *Brij Bihari Lal v. Hon'ble High Court of M.P. (S.C.)* 1980(3) SLR 583, a decision of the Coordinate Bench of this Tribunal at Madras in *A.V. Suryanarayanamurthy v. Union of India* 1984 (4) SLR 255 and also a decision of the apex court in *R.P. Malhotra v. Chief Commissioner of Income Tax, Patiala & Ors* (1991) 17 ATC 225. Mr Malik also referred to the oft quoted decision in *Dev Dutt v. Union of India & Ors* (2008) 8 SCC 725 which mandates communication of even the good remarks to the Govt. Servant. Mr Malik further referred the

Shanker Mishra AIR 1997 SC 367, wherein the Apex Court referring to Article 51 A(j) of the Constitution of India which enjoins every citizen to constantly endeavour for excellence held that the ACRs should be used as a tool of improving excellence of the Govt. Servant rather than as a tool for oppression.

8. Shri Malik submitted that if the respondents considered unauthorized absence as a reason for premature retirement of the applicant, it would be contrary to the afore quoted administrative instructions in the Annex. A/11. He argued that unauthorized absence attracts disciplinary proceedings and hence it should not be dealt with by the short cut method of premature retirement.

9. Mr Malik submitted that if the reasons stated in Annex. A/8 for premature retirement of the applicant is to be considered, there is no sufficient record or service particulars to establish that the service particulars of the applicant was unsatisfactory. He referred to Annex. A/7 order granting MACP and submitted that MACP benefits are granted only on satisfactory record of Confidential Reports and therefore, it should be presumed that the applicant had no adverse records relating to his service.

10. Mr B.L. Tiwari, Ld. Counsel for respondents referring to paragraph 4 (10) of the reply statement submitted that the applicant had only an average record in his Confidential Reports. He further pointed out that till 2004-05, 2005-06, the applicant's

further argued that when the review committee considered the case of the applicant in Annex. A/8 minutes (at page 18 of the paper book), the committee had examined and relied on in the entire records relating to the applicant. Referring to Pyare Mohan Lal v. State of Jharkhand AIR 2010 SC 3753 submitted that the 'washed off theory' ignoring the earlier adverse remarks is not longer good for the purpose of premature retirement of a government servant. He further submitted that therefore, the review committee was justified in considering the entire track record of the applicant including punishments he was awarded as admitted by the applicant in this OA. According to him, review committee considered that the retention of the applicant is not in public interest, therefore, Annex. A/1 order was issued.

11. Mr Malik pointed out that Annex. A/1 order is silent about the reasons for prematurely retiring the applicant. Referring to Mohinder Singh Gill & Anr v. The Chief Election Commissioner, New Delhi & Ors AIR 1978 SC 851 submitted that reasons have to be stated by the administrative authority while passing an order. In Mohinder Singh Gill's case the Hon'ble Apex Court has held that :

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

This view has been reiterated by the Apex Court in *Rashmi Metaliks Limited & Anr v. Kolkata Metropolitan Development Authority & Ors* (2013) 10 SCC 95 also.

10. In *Damoh Panna Sagar Rural Regional Bank & Anr v. Munna Lal Jain* 2005 SCC (L&S) 567, the Supreme Court of India observed:

18. Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* observed: (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree* it was observed:

"Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision maker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

This view has been reiterated by the apex court in subsequent decision in *Reena Rani v. State of Haryana & Ors* (2012) 10 SCC 215

13. A look at impugned order Annex. A/1 clearly shows that the authority which issued the said order has not stated its reasons for the order so issued. Therefore, undoubtedly, it suffers from the vice of "inscrutable face of the sphinx". Therefore, Annex. A/1, being an order which is quasi-judicial in nature, has necessarily to contain the reasons for the decision in that order. As the impugned Annex. A/1 order is bereft of the reasons, we are of the opinion that the same requires to be quashed and set aside while we exercise the powers of judicial review. We take note that during the pendency of the OA, this Tribunal had stayed the operation of Annex. A/1 vide order dated 28.05.2015. By interim order dated 05.11.2015, 16.12.2015 and 19.04.2016, the respondents were directed to release the salary of the applicant till further orders.

14. In the result Annex. A/1 order is quashed and set aside. Respondents are directed to allow the applicant to continue in service with all consequential benefits till he attains the age of superannuation. In the circumstances of the case, the parties shall suffer their own costs.


[Praveen Mahajan]
Administrative Member


[U. Sarathchandran]
Judicial Member