

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXXXX6.

166

1990

DATE OF DECISION 29.5.1991

M. J. Kunjukunju _____ Applicant (s)

Mr. M. R. Rajendran Nair _____ Advocate for the Applicant (s)

Versus

UOI rep. by Secy. to Govt., Respondent (s)
Dept. of Posts, Ministry of Communications,
New Delhi & 3 others

Mr. TPM Ibrahim Khan, ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A. V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? Y
4. To be circulated to all Benches of the Tribunal? Y

JUDGEMENT

(Mr. A. V. Haridasan, Judicial Member)

The important question that arises for consideration in this application filed under Section 19 of the Administrative Tribunals Act is whether notice/order requiring the Government servant to retire after completing 30 years of qualifying service can be issued before the Government servant has actually completed qualifying service of 30 years.

2. The applicant joined the postal service as a Class-IV employee in the Head Post Office, Kottayam on 5.8.1958 and was promoted to the cadre of Postman with effect from 22.6.1960. In the year 1984 he was promoted as LSG Postal

Assistant with effect from 30.11.1983 under the time bound one promotion scheme on completion of 16 years of service as Postal Assistant. While the applicant was thus working as LSG Postal Assistant, he was served with the impugned order dated 24.5.1988 at Annexure-I which reads as follows:

"
ORDER

WHEREAS the Director of Postal Services Cochin Region, Cochin-11 is of the opinion that it is in the public interest to do so;

NOW THEREFORE, in exercise of the power conferred by Rule 48 of the Central Civil Service (Pension) Rules, 1972, the Director of Postal Services, Cochin Region, Cochin-11 hereby gives notice to Shri M.J.Kunjukunju, Sub Postmaster (LSG) Trikodithanam, Changanacherry Division that he on completing thirty years of service qualifying for pension on 29th Aug. 1988, shall retire from service on the forenoon of 30.8.88 or on the forenoon of the following day the date of expiry of three months computed from the date following the date of service of this notice on him, whichever is later."

Simultaneous with this order, another order of the same date was also served on the applicant. This order at Annexure-II reads as follows:

"A notice of the order of retirement under the provisions of Rule 48 of Central Civil Services (Pension) Rules, 1972 is enclosed herewith. Your continuance in service after completion of 30 years of service could be considered, if you are willing to revert to the lower post of Postal Assistant held by you previously. You are eligible for consideration for re-promotion after you have put in a period of two years in the lower post."

Aggrieved by the orders at Annexure-I and II, the applicant submitted a representation dated 11.6.1988 to the Post Master General, Kerala Circle. In reply to this representation he was directed to address a petition to the Director General, Department of Posts, New Delhi. The applicant thereafter submitted a representation dated 27.7.1988 to

the Member (Administration) of the Director General of Posts, New Delhi challenging the propriety of the order at Annexure-I on various grounds. Finding no response to his representation, the applicant filed OA 402/88 before this Tribunal praying to set aside Annexure-I order. During the pendency of the above OA, the applicant received a reply to his representation informing him that the representation committee has considered his representation and has rejected the same. Thereafter the OA was heard and disposed of by this Bench, by order dated 18th September, 1989 with a direction to the respondents that they should dispose of the applicant's representation dated 27.7.1988 after detailed consideration by a speaking order covering the various grounds taken by the applicant in his representation. It was also directed that, final order should be passed within a period of two months from the date of communication of this order, and that the interim order passed in the OA that the applicant's service should not be dispensed with should continue in operation till the disposal of the representation, and that the applicant would be at liberty to approach the Tribunal in case he felt aggrieved by the outcome of the representation. While the applicant continued in service on the basis of the above order, he was served with the Annexure-VII communication issued by the Superintendent of Post Offices, Changanassery dated

9.2.1990 informing him of the reasons for rejection of his representation. The 4th respondent who issued Annexure-VII order was not a party to the OA 402/88. As this order was not in proper compliance with the direction contained in the order of this Tribunal in OA 402/88, and as the applicant was apprehending immediate termination from service, he filed this application praying that the impugned orders at Annexure-I, II and VII may be quashed. During the pendency of this application Annexure-R3(a) order dated 8th June, 1990 was passed by the Deputy Director General(Personnel) stating that the representation committee has not found any grounds for acceding to the representation, pleading for cancellation of the premature retirement of the applicant, and has accordingly rejected the representation dated 27.7.1988. The applicant has amended the Original Application seeking to quash the R.3(a) order. It has been averred in the application that the impugned order at Annexure-I is unsustainable in law since it has been issued before the applicant has completed 30 years of qualifying service. It has been further contended that the impugned order has been passed on absolutely irrelevant and extraneous consideration with a view to harass the applicant who is a member of the Scheduled Caste, and that no public interest is served by reverting him to a lower post.

According to the applicant, the impugned orders at Annexure-I and II have been issued by way of colourable exercise of power in order to reduce him to a lower post without resorting to any departmental proceedings. The applicant prays that the impugned orders may be quashed and set aside.

3. The third respondent, the Director of Postal Services who has issued the orders at Annexure-I and II has sought to justify the orders on the ground that the continuance of the applicant in service beyond 30 years was felt by the High Power Committee to be adverse to the public interest, and that as per note-2 below F.R.56, it is permissible to issue notice even before the Government servant completes 30 years of service provided he is required to retire only after completion of 30 years of service. It has been contended that the applicant's record of service has been too bad to justify his retention in service any further.

4. We have heard the arguments of the counsel on either side and have also carefully gone through the documents produced. The learned counsel for the applicant argued that, as it is evident from the impugned order at Annexure-I itself, that the applicant would be completing only 30 years of service qualifying for pension on 29.8.1988, the third respondent could not validly issued the order requiring him to retire on 30.8.1988, on 24.5.1988, i.e.

before he has completed 30 years of service. He invited our attention to the wording of Rule 48 of the CCS (Pension) Rules and argued that, it is premature for the Appointing Authority to issue a notice of premature retirement to a Government servant before the Government servant has actually completed 30 years of service. According to the learned counsel, any action towards premature retirement of the Government servant under Rule 48 of the Pension Rules can be initiated only after the Government servant has completed 30 years of service qualifying for pension. The learned Central Government Standing Counsel appearing for the respondents argued that, though under Rule 48 a Government servant can be required to retire from service only on completion of 30 years of service qualifying for pension, there is no prohibition in issuing a notice earlier provided the Government servant is required to retire only on completion of 30 years of service. Rule 48 of the CCS (Pension) Rules reads as follows:

"48. Retirement on completion of 30 years' qualifying service

(1) At any time after a Government servant has completed thirty years' qualifying service-

- (a) he may retire from service, or
- (b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension:

Provided that-

- (a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and

(b) the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice:....."

The learned counsel for the respondents invited our attention to Note-2 under FR 56 in regard to premature retirement which reads as follows:

"The three months' notice referred to in clauses (j), (k), (l) or (m) may be given before the Government servant attains the age specified in clauses (j) and (k), or has completed 30 years of service specified in clauses (l) and (m), provided that the retirement takes place after he has attained the relevant age or has completed 30 years' service, as the case may be."

The learned counsel submitted that the same principle is applicable in the case of retirement on completion of 30 years of qualifying service under Rule 48 of the CCS (Pension) Rules, and that, therefore, there is no substance in the argument that the impugned order at Annexure-I is unsustainable, because/it was issued before the applicant has completed 30 years of qualifying service. He was required to retire only on completion of 30 years of service. This argument cannot be accepted for the reason that Note-2 under F.R.56 relates to premature retirement under FR.56 (j), (k), (l), and (m) and not to the premature retirement under Rule 48 of the CCS (pension) Rules. Provision of CCS (Pension) Rules and the FR are mutually independent. The applicant is not a person coming under the provisions of FR.56(j). Since there is no corresponding provision in Rule 48 providing for issuance of a notice even before the Government servant

sought to be retired prematurely has completed 30 years of qualifying service, it cannot be argued that the Note-2 under FR 56 should be made applicable. A proper reading of Rule 48 would make it clear that a Government servant may retire from service or he may be required to retire by the Appointing Authority in public interest only after the Government servant has completed 30 years of qualifying service, and that to issue an order before the Government Servant has completed 30 years of qualifying service, that he should retire on completion of 30 years of qualifying service is not actually contemplated by this rule. According to the proviso 'B' to Rule 48, the Appointing Authority is to give notice in writing to the Government servant at least 3 months before he is required to retire in the public interest or 3 months to pay pay and allowances in lieu of such notice. The wording at least 3 months before the date on which he is required to retire would indicate that there is no upper limit for the period of such notice. Therefore, to issue a notice to a person in service at any time according to the whims and fancies of the Appointing Authority that the Government servant should retire on the day next to the date on which he completes 30 years of service does not appear to be the intention of the rule. Such interpretation would be unconscionable and against the intention of the rule itself. In the instructions regarding premature

retirement of Central Government servants issued by Government of India, Ministry of Home Affairs in the OM No.25013/14/77-Estt.(A) dated 5.1.1978 at instruction No.8, it is seen stipulated as follows:

"W "When the appropriate authority has come to the conclusion that Government employee may be prematurely retired, the three months' notice referred to in F.R.56(j) and F.R.56(l) may be given before the Government servant attains the specified age or has completed 30 years of service, as the case may be. But, the retirement should take place after Government servant has attained the relevant age or has completed 30 years of service as the case may be. In this connection, attention is invited to Note 2 under F.R.56. Accordingly, a notice even longer than three months or before the Government servant attains the age of 50/55 years, or completes 30 years service could be given but the date from which he is required to retire as specified in the notice should not be before he attains the age of 50/55 years, or completes 30 years of service, as the case may be. Similarly, in cases of retirement under Rule 48 of the CCS(Pension) Rules, 1972, while the notice of such retirement could be given before the Government servant actually completes 30 years of service qualifying for pension, the date of expiry of the notice on which the Government employee's retirement would be effective should be one falling on or after the date of his completing 30 years of service qualifying for pension. In this connection, attention is also invited to the Ministry of Finance O.M.No.F.12(8)/E.V(A)/60, dated the 6th July, 1960 (see Decision No.(1) below), in which it has been stated inter alia that orders requiring a Government employee to retire after completing 30 years 'qualifying service should, as a rule, not be issued until after the fact that the Government employee has indeed completed, or would be completing on the date of retirement, qualifying service of 30 years, has been verified in consultation with the account/audit officer concerned." (emphasis added)

Going by this instruction, a notice requiring the Government servant to retire on completion of 30 years of qualifying service can be issued even before the employee has completed 30 years of service provided he is required to retire only on completion of 30 years of service. But this Government instruction is opposed to the spirit of Rule 48 of the CCS

(Pension) Rules. Rule 48 of the CCS (Pension) Rules is a statutory rule whereas the Government instruction is only an administrative order. Administrative instructions contrary to the statutory rules has no legal validity. Further, the Office Memorandum of the Ministry of Finance No.F.12(B)/E.V(A)/60 dated 6.7.1960 reads as follows:

"Cases have come to the notice of the Government of India in which certain Government servants were permitted/required by the Administrative Authorities to retire from Government service on the assumption that they had completed 30 years qualifying service. The assumption eventually proved wrong on actual verification and the qualifying service was found to be less than the period assumed. Such retirements are irregular in terms of these rules apart from the difficulties they give rise to. With a view to obviating such difficulties in the future, orders permitting/requiring a Government servant to retire after completing thirty years qualifying service should as a rule not be issued until after the fact that the officer has indeed completed qualifying service for thirty years has been verified in consultation with the Accounts Officer."

The above quoted Government instruction would make it abundantly clear that order requiring a Government servant to retire on completion of 30 years can be issued only after the fact that the officer had indeed have completed 30 years of qualifying service ^{has been verified} in consultation with the Accounts Officer. In the Government instruction dated 5.1.1978 while placing reliance on this OM something which was not there in this OM also has been quoted ^{namely that} ~~to be thus~~ ^{as underlined and emphasised} ~~as~~ "would be completing on the date of retirement" in the last sentence of the instruction No.8, in the instruction dated 5.1.1978. Therefore, the Government instruction No.8 contained in the Ministry of Home Affairs OM No.25013/14/77-Estt(A) dated 5.1.1978 enabling a notice to be issued before the employee has completed 30 years of service requiring him to retire on completion of 30 years of service is not in our view a proper and binding

instruction, in view of the facts that this is opposed to the spirit of Rule 48 of the CCS(Pension) Rules. Hence, we are of the view that the impugned order at Annexure-I issued on 24.5.1988 long before the applicant has completed 30 years of service qualifying for pension is unsustainable in law.

5. The applicant has a further contention that the impugned orders at Annexure-I and II requiring him to retire from service or in the alternative to opt for continuance in the lower post is punitive in nature, that it was issued with a view to harass him, and that no public interest is at all served by such orders. He has also a case that since he was promoted to the LSG cadre in 1984 reliance should not have been placed on his service records relating to the period prior to 1984, and that the adverse entries in the Confidential Reports in the year 1987-88 relied on not having been communicated to him should not have been relied on. It is beyond dispute that the applicant was promoted to LSG cadre in the year 1984 with retrospective effect from November, 1983. The applicant's case that the adverse comments in the ACR in the year 1987-88 had not been communicated to him is not controverted. The applicant before promotion to LSG cadre was working as a Postal Assistant. A postal assistant can be posted as Sub Post Master also. The learned Central Government Standing Counsel appearing for the respondents conceded that a Postal Assistant whether he is given promotion to

LSG cadre on time bound one promotion scheme or not, discharges the same function i.e. the functions of Postal Assistants whether LSG or not are one and the same. So even if the applicant is reverted to the lower post of Postal Assistant, he would be continuing to discharge the same duties as he had been performing at the time when the impugned order at Annexure-I was issued. So the only change by reverting the applicant to the lower post of Postal Assistant would be a reduction in the emoluments of the applicant. There will not be any change in the duties and responsibilities of the applicant. Therefore, no public interest seems to have been served by reverting the applicant to the post of Postal Assistant because even after that reversion he would be discharging the same duties as a Postal Assistant though he may not be getting the grade pay of LSG Postal Assistant. ~~xxxxxxxxxx~~ Therefore on merits also we do not find that any public interest would be served by the impugned orders at Annexure-I and II.

6. In the final order passed in OA 402/88, the respondents i.e. Union of India represented by its Secretary to Government, Department of Posts, 2. the Member(Administration), Office of the Director General, Posts, 3. Director of Postal Services, Cochin were directed to dispose of the applicant's representation dated 27.7.1988 after detailed consideration by a speaking order covering the various grounds taken by the applicant in his representation

Annexure-R3(a) is the final order passed on the representation of the applicant dated 27.7.1988 by Director General (Personnel). The representation was to be disposed of by the Representation Committee. A reading of the Annexure-R.3(a) would show that the Representation Committee has not considered the representation again and given a reasoned decision of ^{has not} _R the Committee, and that the Director General(Personnel), who is said to be a Member of the Committee has stated the reason why the Committee has not found any ground for acceding to the representation pleading for cancellation of the premature retirement order made by the applicant in his appeal dated 27.7.1988. This in our view is not a proper disposal of the representation. The Committee which considered the representation should have given a speaking order. It is not sufficient if one of the Members explains the grounds on which the Committee had earlier rejected the representation. Therefore, the R.3(a) order is also not sustainable.

7. In view of the above discussion, we find that the impugned orders Annexure-I requiring the applicant to retire from service ~~in~~ completion of 30 years of service is unsustainable in law, and that the Annexure-II, VII, R.3(a) orders are also unsustainable. Therefore, we quash and set aside the impugned orders and direct the respondents to allow the applicant to continue in service as LSG Postal ^{with all consequential benefits} Assistant. There is no order as to costs.


A.V. HARIDASAN
JUDICIAL MEMBER

29.5.1991


S.P. MUKERJI
VICE CHAIRMAN

29.5.1991