

(AP)

THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,
LUCKNOW

O.A. No. 315/89

Kanhiya Lal Shukla ... Applicant

Vs.

Union of India & others ... Respondents

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, A.M.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

1. The applicant has approached this Tribunal challenging the compulsory retirement from service on the ground that the suggestive and advisory remarks was not being signed by the appointing authority and as such being without jurisdiction and the retirement order is based on the said malicious remarks which has been taken the bases for his non-retention in service in public interest is punitive in nature. The applicant started his career as a Revit Boy in the C&W Shop, Lucknow in 1985. He was again promoted to higher post of 'Highly Skilled Revitter Under Frame II' on 9.4.79 and thereafter on the post of Mistry Grade-I on 18.5.81. According to the applicant, because he could not oblige his officer S.S./Wagon that is why he started making complaints against him and the result of the same is that the notice of compulsory retirement dated 24.11.87 was served upon him.

2. The applicant made appeal against the same but without any result and that is why he has approached this Tribunal. The Learned Counsel for the respondents has also produced the record including that of the

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Review Committee and found that the applicant was no longer to be retained in service and is to be retired. According to the respondents, although he was promoted but he was very poor in his attendance. His annual increments were also deferred from their due dates and during the period from 31.5.57 to 10.4.73 he availed not only his all kinds of leave admissible to him at that time, but also availed leave without pay for 2 years 2 months and 16 days. He was awarded One Censure punishment by the disciplinary authority for sitting idle and wasting time on 19.2.1963. Another punishment for with-holding of increments permanently for 2 years was also imposed by disciplinary authority for not starting the work, and not lighting his furnace by 8.00 A.M., one hour after the start, which on appeal of the applicant was reduced to stoppage of Passes and PTOs for one year by the appellate authority on sympathetic considerations. He participated in the strike on 12.7.1960, which was treated as Dies-non for all purposes, but it was counted as on leave with allowances. He also participated in the strike in 1974, but the period was regularised as leave due. His Annual Increment was again deferred and so was the case in 1983 as well as in 1985. He not only availed all sorts of leave admissible to him between 31.3.74 to 31.3.87 but also availed 1 year 9 months and 7 days leave without pay, besides the period mentioned earlier, i.e. 2 years 2 months and 16 days and thus he availed the total leave without pay as 3 years 11 months and 18 days during his service period which showed his irregularity and irresponsibility towards his duty.

3. The applicant was also served upon SF.11 which was received by him on 10.9.87 and his explanation

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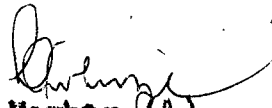
was called. It was found that he has not changed his habit yet and he was warned as he has promised to improve. Another minor penalty charge-sheet was issued to him in May 1987 and he was found guilty of the charges, and punishment was imposed as he had not improved inspite of warning dated 23.3.87 at PP2 WIT for one year. A confidential warning regarding his work was also issued by the Production Engineer vide Confidential Notice No.PE/Confe.1(E)/III/1981 dated 27.8.1981 later on. Thus it is to be noticed that review Committee took into consideration the applicant's record and his absence during these years and thereafter it came to the conclusion that now he should not be retained in service and be compulsorily retired. We do not find any ground to interfere of the assessment made by the Review Committee as there was sufficient material before the Review Committee to arrive at the particular conclusion in which the disciplinary authority agrees. It was a case of overall assessment and the disciplinary authority concerned was entitled to take plea of overall assessment and even uncommunicated adverse entry and to come to a particular conclusion. In this connection, a reference has to be made to the case of Shri B.N.Dass Vs. Chief Distt. Medical Officer, 1992 S.C. Page 1020 wherein the Supreme Court has after taking into consideration took the view that retirement on overall assessment which may include uncommunicated remarks was not illegal. It is also to be noted that the applicant's case for any alternative employment in terms of Govt. order in case the lower post was also considered, but he was not found/^{even} fit for a lower post.


4. Accordingly, we do not find any merit in the case and the application deserves to be dismissed and is

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accordingly dismissed. However, we make no observations regarding the re-employment of the applicant who has still not attained the age of superannuation and it is for the Railway Administration to re-employ him for a particular period till he attains the age of superannuation.

5. No order as to the costs.


Member (A)


Vice Chairman

Lucknow
dt. 15.12.92
/smc/

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