

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
T.A. No.

550

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DATE OF DECISION 3.7.90

Yatendra Kumar Bansal Petitioner

Mr M.V.Ganu,

Advocate for the Petitioner (s)

Versus

Union of India and others

Respondent

Mr M.I.Sethna

Advocate for the Respondent (s)

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The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. P.S.Chaudhuri, Member(Admn).

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

Re
(G.Sreedharan Nair)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH : NEW BOMBAY

O.A.550/87.

Yatendra Kumar Bansal ...	<u>Applicant.</u>
-versus-	
Union of India and others ...	<u>Respondents.</u>

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri P.S.Chaudhuri, Member(Admn).

For the applicant- Mr M.V.Ganu, Advocate

For the respondents- Mr M.I.Sethna, Advocate

Date of hearing - 25.6.90 and 26.6.90

Date of Judgment and Order - 3.7.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

The applicant while employed as a Junior Production Engineer in the Nangal Heavy Water Plant of the Fertiliser Corporation of India was appointed as a Scientific Officer/Engineer Grade SC2 in the Atomic Energy Establishment, Trombay, with effect from 1.2.1961. He was promoted to the grade of Scientific Officer/Engineer Grade SD 2 with effect from 1.2.1968 and to the Grade of Scientific Officer/Engineer Grade SF on 1.2.1973. After training with M/s UDHE, the Contractors for the Heavy Water Project, Talcher, he was appointed as the Construction Manager in the Heavy Water Project, Talcher, on 19.9.1975. He was promoted to the post of Scientific Officer/Engineer Grade SG with effect from 1.2.1981 and he was confirmed in the Grade of Scientific Officer/Engineer Grade SF with effect from 1.2.1980 by the order dated 31.3.1983. In November, 1980, he was posted as the Works Manager, Heavy Water Plant, Talcher. On 27.9.1985, he was removed from that post and by the order dated 30.9.1985 he was posted to the Central Office with the Heavy Water Project at Bombay. On 6.1.1987, he served a notice of voluntary retirement, but by the order dated 7.1.1987 he was compulsorily retired invoking the powers under Clause(j) of Fundamental Rule 56. On 23.1.1987, he preferred a petition for review of the order. Since, it was not disposed of, he ^{has} filed the present application for setting aside the order of retirement

2. It is urged that the order has been passed on collateral grounds, is ^abiased and ^malicious and amounts to colourable exercise of power. It is also stated that it is punitive and amounts to victimisation. There is the further allegation that the order is bad as the mandatory instructions and guidelines with respect to the review and regarding the payment in lieu of notice have not been complied with. It is averred that as the applicant was to complete 50 years of age on 6.4.1986, his case had to be reviewed during the quarter October-December, 1985; but the review was conducted only in September, 1986. It is also stated that though the impugned order was issued on 7.1.1987 and was served on the applicant on 8.1.1987, a cheque in lieu of notice was drawn on 8.1.1987 and was delivered to the applicant only on 9.1.1987. There is the further plea that in view of the Office Memorandum (O.M.) dated 11.1.1964 issued by the Department of Atomic Energy, the provision of Clause(j) of FR 56 cannot be invoked against the applicant.

3. A reply has been filed by the Under Secretary (Projects), Department of Atomic Energy, on behalf of all the respondents. It is stated that the post of Works Manager at Talcher is the highest executive post at that location and, hence, the incumbent of the post has to be a person not only with proven past record but also a person whose present competence and ability to carry out the job must be such as to inspire confidence, and on review of the competence of the applicant he had to be transferred from the post. Subsequently, after proper review of the case, the decision to retire the applicant in public interest was taken under clause (j) of FR 56. The decision was taken in accordance with the Rules and the procedure laid down. It is pointed out that the applicant

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was warned orally and in writing to improve and that it was because he failed to respond to any corrective action and the advice of the Management, he was transferred from the post. It is contended that the representations submitted by the applicant against the order of retirement could not be disposed of within the prescribed period as the concerned officials were preoccupied with urgent work.

4. It is trite that an aggrieved civil servant can assail an order of compulsory retirement invoking the authority conferred under clause (j) of FR 56, on the ground that the decision is arbitrary and is based on collateral grounds. We have carefully gone through the concerned files which contained the recommendations of the Review Committee as well as the assessment file relating to the performance of the applicant. It emerges that the action has been taken not ~~only~~ on the ground of lack of integrity, but is based solely on deterioration in performance. It cannot be disputed that the power under the relevant clause can be invoked to retire a civil servant of proved inefficiency on an overall assessment of his performance as reflected in his assessment record. On an anxious examination of the records, we are of the view that the case of the applicant does not fall within that category.

5. It is clear from the records that ever since the applicant joined the Atomic Energy Establishment in the year 1961 till his posting as Works Manager in the Heavy Water Plant at Talcher, he was considered to be an efficient officer as reflected by the entries in his assessment file. The applicant was initially appointed as Engineer Grade SC2, and was duly promoted to the Grades SD2, SE, ^{and SG.} and SF₂. In September 1975, he was appointed as the Construction Manager of the Talcher Project. His Confidential Reports

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relating to the period 1975-76 contains the following entry by the Reporting Officer :

" The officer has quite a good capacity to organise and direct Project activities and views things without bias or prejudice which is very essential for the job for proper co-ordination. He is very energetic and conscientious."

The Countersigning Officer has remarked :

" He is very well suited to his present job. Sincere, keen and sharp. Shri Bansal has easily stepped into the Construction Manager's job with ease and stabilised, within a short time, and organised routine".

5. During the period 1975-76, the Reporting Officer has recorded :-

" He is a capable Engineer with a natural flair for organised management. He is very good for Project work and gives good leadership to the Project Staff as a whole."

The Countersigning Officer has recorded as follows :

" He will shine in Project Management and will continue in this assignment".

6. During the period 1977-78, the respective remarks are :

" Mr Bansal is a very sincere, conscientious and capable officer. He has the attitude of a good Manager in independently analysing situations without any bias towards anyone or any side".

" He is very good for Project Work and so should continue as such."

During the year 1978-79 while the Reporting Officer has remarked :

"Mr Bansal has been looking after the constructional activities of the Project since 1975 and he has done quite a good job, considering the difficulties faced generally at site as well as from the various suppliers. He is very cooperative, efficient and dependable."

The Reviewing Officer has remarked :

" Shri Bansal is sincere and hardworking and has done well during this year".

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The remarks for the year 1979-80 are on the same lines.

7. The applicant has specifically alleged in the application about some basic flaws in the design and the process of the Talcher Heavy Water Plant and about the difficulties in commissioning the same though it was mechanically completed. He has also stated that the contractors were eager to get rid of their contractual obligations and the liabilities in respect of the commissioning of the Plant. When the applicant was made the Works Manager of the Project, the 4th respondent was in overall in-charge of the Heavy Water Plant and the 5th Respondent was specifically dealing with the Heavy Water Project, Talcher. It is the case of the applicant that he had advised the respondents 4 and 5 not to accept the plant since such acceptance will relieve the contractors from their obligations, but without heeding to his advise, the acceptance certificate was signed by the 4th respondent and the Plant was taken as "complete in all respects", but it did not produce even a drop of heavy water despite a huge capital expenditure of over 80 crores. A specific plea has been put forward by the applicant in the application that the respondents 4 and 5 wanted to haul up somebody to cover their lapses in accepting the Plant and the applicant was made a scapegoat, by making aspersions on him in his assessment file. Though the respondents 4 and 5 have been impleaded by name, neither of them has cared to file reply to the application or even an affidavit denying the averments in this respect in the application. In the reply filed by the Under Secretary (Projects) on behalf of all the respondents, the plea put forward is that the applicant was a party to the discussion held with the contractors before acceptance of the Plant and hence the allegations made in this behalf are "not relevant".

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8. In this context, it has to be observed that during the period 1980-1981, the Reporting Officer has commended the performance of the applicant. By then, the 4th respondent had become the Reviewing Officer. He has remarked :

" Is doing quite a good job as Works Manager at Talcher. He is quite dynamic. He is putting in valuable efforts in getting the plant commissioned."

However, he has also observed :

"Has a tendency to be impulsive and arrives at snap judgment, particularly in dealing with people".

By the year 1981, the 5th respondent had taken over as the Executive Director of the Project. In the assessment of the applicant for the year 1981-82, the 5th respondent had agreed with the achievements outlined by the applicant in the self-appraisal and gave him "A" Grade, that is, well above average standard. However, the 4th respondent as the counter-signing authority has remarked that the performance of the applicant is just average and gave him the Grading " B Plus", i.e., average. This is seen to have been repeated during the periods 1982-83 and 1983-84 as well. In respect of the period 1984-85, the 4th respondent has recorded that " the applicant has a negative approach and the achievement of production of Heavy Water Plant has been through the enthusiasm of the younger staff inspite of the applicant's pessimism." While making the assessment for the period 1985-86, the 4th respondent has remarked :

" At the level of SG he is not suitable for any assignment. The possibility of compulsory retirement at the age of 50 has to be examined".

This minuting was made by the 4th respondent on 6.3.1986. It may be noted in this context that in accordance with the instructions given by the Government in the O.M.Dated 5.1.1978, the review in respect of the applicant for

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proceeding under clause (j) of FR 56 had to be undertaken during October-December, 1985 as he was to complete 50 years of age on 6.4.1986; but no such review was done. Evidently, on the basis of the aforesaid minuting by the 4th respondent, the 5th respondent by his note dated 5.9.1986 pointed out certain shortcomings relating to the applicant as regards the commissioning of the Plant and observed that the applicant displayed helplessness and lack of will to control and improve the situation in meeting the challenges. In the meanwhile, the applicant had been transferred from the Project and was posted in the Central Office by the order dated 27.9.1985. That fact was pointed out in the note and the assumption of the applicant of the duties to look after planning and budgeting of the Heavy Water Plant, Hazira, has been adverted to therein. It is seen that as soon as the note was received, on the very same day, the 4th respondent proposed the case of the applicant for compulsory retirement. His minutes is as below :-

"Since 1981 in the commissioning of the Plant Shri Bansal has proved ineffective and hence his case has been proposed for compulsory retirement after review on reaching the age of 50."

"In this connection, O.M. dated 7.3.1986 on the subject of premature retirement refers".

It is seen from the proceedings of the Review Committee that it did take note of the past good performance of the applicant as the Construction Manager of the Project. But placing reliance on the remarks of the 4th respondent in the Confidential Reports of the applicant during the periods 1982-85, and the gradings given, the Committee observed that there is a pronounced downward trend, and based on the same made the recommendation for compulsorily

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retiring the applicant. It was the said recommendation that ^{was} ~~is~~ acted upon by the Competent Authority to issue the impugned order. It has also to be pointed out that taking into account the past good performance of the applicant though the Committee recommended for consideration of the Competent Authority that an option may be offered to the applicant to revert him to the lower grade ~~3300~~ held by him earlier, without indicating any reason, even affording of that option was negatived by the Competent Authority.

9. From the discussions¹¹²⁵ above, we hold¹¹²⁵ on the facts, ~~that~~ the conclusion that the applicant has become ineffective ~~seems~~ to continue in service cannot reasonably be arrived at. We are conscious that the Tribunal is not to assume the role of an appellate authority in the matter of assessment by the Review Committee or with respect to the conclusion of the Competent Authority. At the same time¹¹²⁵, an inference of ineffectiveness cannot reasonably be arrived at on the materials on record, the recommendation of the Review Committee and the decision based thereon have to be struck down as arbitrary. From what has been stated in the preceding paragraphs, the ^{attack} ~~conclusion~~ that the decision is based on collateral grounds, has also to be ~~admitted~~ ^{accepted}.

10. The evidence on record further indicates that on 6.1.1987, the applicant had given notice of voluntary retirement. It is thereafter that the impugned order of compulsory retirement is seen to have been issued and is seen to have been ^{attempted} ~~admitted~~ to be served on the applicant in all haste alongwith a post-dated cheque representing the pay and allowances in lieu of the requisite notice.

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11. It follows that the impugned order compulsorily retiring the applicant is bad in law and has to be struck down and we do so ~~hereby~~.

12. Though the counsel of the applicant pressed before us several other grounds put forward in the application for quashing the impugned order, we are not adverting to the same, as it is not necessary since the applicant succeeds on the main grounds urged.

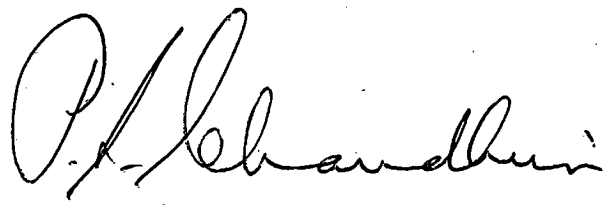
13. As the applicant has given notice for voluntary retirement on 6.1.1987, we do not think that a direction for reinstatement of the applicant in service is called for at this stage. We direct the respondents to take up the request of the applicant for voluntary retirement as conveyed through the notice dated 6.1.1987 and to dispose it of in accordance with law, immediately, and, ~~also~~ at any rate, within ^{two} months of the receipt of the copy of this order. In case the request for voluntary retirement ^{stands} ~~has been~~ rejected on account of the compulsory retirement by the impugned order, in view of this ^{order,} the respondents shall reconsider the request for voluntary retirement.

14. It is needless to add that if the respondents decide that the request for voluntary retirement is not permissible in accordance with the Rules, the order of compulsory retirement having been set aside, the applicant shall be reinstated in service forthwith and shall be treated as having been in continuous service till such reinstatement. However, he shall not be entitled to pay and allowances during the said period.

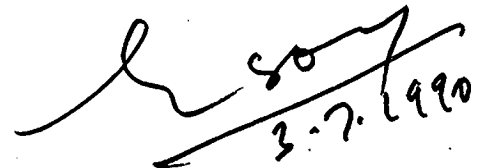
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15. The application is disposed of as above.



(P.S. Chaudhuri)
Member (Admn)



(G. Sreedharan Nair)
Vice Chairman.

S.P. Singh/

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