

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

CAMP AT NAGPUR

O.A. NO: 214/87

199

~~Ex-AxxN@x~~

(15)

DATE OF DECISION 20.11.1991

Vithaldas G. Kowale Petitioner

Mr. L.B. Walthare Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Mr. Ramesh Darda Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, V/C

The Hon'ble Mr. M.Y. Priolkar, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

mbm\*

  
( M.Y. Priolkar )  
M (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY  
CAMP AT NAGPUR  
\* \* \* \* \*

(16)

Original Application No. 214/87

Vithaldas Ganpat Kowale,  
R/o. Rahate Colony,  
Nagpur

... Applicant

v/s

1. Union of India through  
the Director General of  
Meteorology, Mausam Bhawan,  
Lodi Road, New Delhi.
2. Assistant Director, Office of  
the Commissioner for Scheduled  
Castes & Scheduled Tribes,  
West Block-1, Wing 7, 1st Floor,  
R.K.Puram, New Delhi 110 066.
3. Regional Director of Meteorology,  
Regional Meteorological Centre,  
Airport, Nagpur.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava  
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr.D.B.Walthare, Advocate  
for the applicant and  
Mr. Ramesh Darda, Counsel  
for the respondents.

ORAL JUDGMENT:

Dated : 20.11.1991

(Per. M.Y.Priolkar, Member (A))

The applicant in this case was compulsorily  
retired by order dated 24.4.1986 with effect from  
1.8.1986. He has the grievance that the Government  
instructions and guidelines in the matter of premature  
retirement of employees and the protection and safeguards  
guaranteed to Scheduled Castes/Tribes candidates as also  
the law laid down in various judicial decisions have not  
been followed by the respondents, while issuing the  
impugned order of premature retirement.

2. Specifically, the applicant alleges that an  
adverse entry has been entered in his confidential report  
of 1983-84 and although he had represented against it vide

letter dated 30.5.1985 no reply has still been received. The applicant also alleges that the review was carried out much after the applicant had crossed the age of 50 years which is against the instructions of the Government which provide that the review should be done before the employee reaches the age of 50/55 years as the case may be.

3. We have perused the ACRs of the applicant from which it is seen that there have been some adverse remarks communicated to him for the years 1959, 1962-63, 1976-77, 1977-78 and also 1983-84. While these adverse remarks of 1983-84 are relating to his poor professional knowledge and failure to qualify in meteorological training, the earlier adverse remarks were regarding punctuality as also lack of interest in work. The respondents have said in their written reply that the decision for the applicant's premature retirement was taken on an overall assessment of the entire service record, particularly of the last ten years ACRs. In view of the number of adverse remarks which have been referred to above it cannot be said that the decision of premature retirement was malafide as alleged by the applicant. We are of the view that the decision for premature retirement of the applicant appears to be justified on the basis of the overall assessment of the service record and cannot be considered as arbitrary or based on any extraneous considerations.

4. The learned counsel for the applicant contended that the adverse remarks for the year 1983-84 were communicated to the applicant on 3.1.1985. He had filed a representation against these adverse remarks vide his

letter dated 30.1.1985 addressed to the Regional Director, Regional Meteorological Centre, Nagpur. It is his contention that he has received no reply to this representation and evidently these remarks against which the representation was pending have been considered by the review committee in coming to the decision of his premature retirement. We have seen the letter dated 30.1.1985 (Annexure-V of the application). In our view, this can hardly be called a representation for expunction of the adverse remarks. The letter in the first part merely states that not only the applicant but there are a number of others who have also failed to pass the Intermediate Meteorological Training Examination in spite of repeated attempts. In the second part of the letter it is stated that according to record there was no VIP Flight on 20.9.1984 for which a forecast was necessary nor was the applicant on duty on that day and if this is not so, then all the relevant documents be supplied for his information. Admittedly, the applicant did not pursue this letter until more than one year later. The letter, however, is not of the nature of a representation against the adverse remarks. We are, therefore, unable to accept the applicant's contention that his representation against the adverse remarks was pending at the time when the review committee had decided his premature retirement.

5. The learned counsel for the applicant also argued that under the Department of Personnel, Ministry of Home Affairs instructions dated 5.1.1978 it has been provided under Clause II(6)(i) that in case the appropriate authority after the relevant review comes to the conclusion that the officer is not fit for being retained in the present post it should consider whether the official could

be retained in the next lower post from which he was promoted, but this was not done in the present case. In Clause II(8) it has been provided that once the appropriate authority comes to the conclusion that a Government employee will be prematurely retired, the three months notice referred to in FR 56(j) and FR 56(I) may be given before the Government servant attains the specified age or has completed 30 years of service as the case may be. It was the learned counsel's contention, therefore, that since in this case the three months notice has been served on him only on 2nd May 1986 whereas he had attained the age of 50 years on 1.7.1985, the notice issued is bad in law being in violation of the instructions on this subject which according to him were mandatory. The counsel was not, however, able to show any specific case law on this point that these administrative instructions are to be treated as mandatory and not directory. He only referred to the decision of the Tribunal in the case of Shri N.N. Nirban v. Union of India, 1988(1) CAT 455 in which it has been held that since the applicant in that case had not been cleared at 50 years, there was no bar to review his case at the stage when he was to complete 55 years. This case is, therefore, no direct authority on the point whether even slight delay in the issuance of the notice of premature retirement would vitiate such decision. The learned counsel also referred to another decision of the Tribunal in the case of J.C. Baijal v. Lt. Governor of Delhi & Ors, ATR 1987(1) 283, in which it has been held that compulsory retirement should not be resorted to as a substitute for disciplinary action. In this case we have already held earlier that the compulsory retirement in the case of the present applicant appears to be justified on an overall assessment of his entire service record and cannot be considered to have been based on any extraneous considerations. This judgement

of the Tribunal also, therefore, is of no assistance to the applicant. Lastly, the counsel referred to the Supreme Court judgement in the case of State of Uttar Pradesh vs. Chandra Mohan Nigam & Ors., AIR 1977 SC 2411 in which it has been held that instructions from Ministry of Home Affairs in the matter of procedure on compulsory retirement are binding. This judgement is, however, with specific reference to statutory All India Services (Death-cum-Retirement) Benefit) Rules 1958 which are applicable only to officers of the All India Services. In the present case the applicant is an officer of the India Meteorological Department who isnot covered by these statutory rules. It may, however, be noted that it has been held in this judgement that cases could be reviewed for the first time even of officers who had crossed the age of 50 years even before reaching 55 years of age. This judgement also is not, therefore, of any assistance to the applicant in this case as this was the first such review for him.

6. On the basis of the forgoing discussions, we do not find any merit in this application which is accordingly dismissed with no order as to costs.

7. After the above judgement was dictated the learned counsel for the applicant stated that the applicant had already submitted a representation dated 19.9.1986 against this order of premature retirement and that this representation was still pending with the Government. He, therefore, made a prayer that a direction could be given to the Government to consider his representation dated 19.9.1986. We would only like to state that now that we have finally decided the case, this representation is <sup>a matter</sup> ~~between the~~ applicant and the Government and it is for the Government ~~and it is for the~~ Government to take such final decision