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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No. 525/88.

Shri Bhopinder Singh.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

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

Appearances:

Applicant by Shri G.S.Walia.

Respondents by Shri M.S.Ramamurthy.

JUDGMENT:-

(Per Shri U.C.Srivastava, Vice-Chairman) Dated: 29/8/91

The applicant who was a Chief Claims Officer, Western Railway, Bombay has filed this application against his compulsory retirement before attaining the age of superannuation which he was to attain on 31.12.1990. The applicant entered the service of the Indian Railway Traffic Service on 18.10.1958 in Class I service. The applicant got himself treated in U.S.A. in 1984-85, where a by-pass surgery was done. He was required to pay the telephone bills which included charges for some overseas calls, amounting to Rs.9,000/- against which he approached this Tribunal to which initially an interim order was granted and now before us it has been stated that this application has since been dismissed. The applicant was transferred to North-Eastern Railways, Gorakhpur vide order dt.9.2.1988, against which he filed an application before this Tribunal which stayed the operation of the Transfer Order. On 22.2.1988 it was continued vide order dt. 4.4.1988. The applicant was directed to undergo medical examination and the applicant challenged the inclusion of one Dr.Phanidhar in the Medical Board before this Tribunal. The Tribunal

directed that Dr. Phanidhar be excluded from the Medical Board and the applicant thereafter appeared before the re-constituted medical board on 30.5.1988 and according to the applicant the medical board recommended that it was not advisable to transfer him out of Bombay at present. Thus according to the applicant as a result of all these that an order dt. 6.7.1988 was issued by the Railway Board prematurely retiring him w.e.f. that date with a mention that he will be paid a sum of an amount equivalent to his pay plus allowances for a period of three months. Although the order was not served, but it was pasted on his doors. The retirement order has been passed under Rule 2046(H) (F.R. 56 J) which according to the applicant is intended to eliminate Officers of doubtful integrity and his integrity was never in doubt and according to him no committee ever reviewed his case yet arbitrarily he has been retired and the order is arbitrary, capricious, mala fide, not in public interest, discriminatory and contrary to provisions of Article 14, 16 and 311 of the Constitution of India.

2. The respondents have opposed this application and after denying the earlier allegations have stated that the retirement order in fact was served on the applicant in office, but after going through it he refused to accept the same as well as the cheque which was sent to him by registered post. The order of retirement has been passed by the President of India and it has been stated that it was not correct to state that no adverse remarks were communicated to him or that he has rendered exemplary service. Feeling aggrieved the applicant has approached this Tribunal and as a matter of fact the case of applicant was reviewed by the Screening Committee constituted by Members of the Railway Board and the record of the applicant was given due consideration by the Screening Committee and it is not correct to state that it is a malafide order

or by way of punishment or suffers from any infirmity otherwise.

3. We have gone through the record produced before us and from the record of the proceedings of the character roll and the proceedings of the Review Committee we have found that so far as assessment of evidence regarding work is concerned the review committee gave him 15 points for the last 5 reports, but as far as his integrity is concerned the Review Committee noticed that ⁱⁿ the past he figured in 6 cases, out of these 5 cases were closed and in the 6th case he was exonerated and at present he was lingering in two cases: one case relates to allotment of coaches in which a minor penalty proceedings were initiated against him in the year 1988 and the other relates to mis-use of official telephone and the initiation of proceedings for major penalty in this behalf was under contemplation. In March, 1983 in his A.C.R. so far as integrity is concerned it was mentioned that he was acquired a dubious reputation and in March, 1984 it was mentioned that the integrity cannot be certified as good and clear. The review committee was of the view that his integrity was not free from doubt. It was a fit case in which the provisions of rule 240 may be moved and the matter went up to the Ministerial level and everyone agreed with the same.

4. On behalf of the applicant it has been contended that regarding his integrity no communication was made to him and he was not given any opportunity to represent against the same and as such on the basis of doubt on his integrity he could not be retired unless intimation of the same is given and in this connection learned counsel placed reliance on Judgment of this Bench

in Diwakar Dattatraya Joshi (O.A. 230/88) v. Union of India decided on 27th February, 1991 in which case there was no adverse entry regarding work or integrity after 1984 in which he was rated as a good officer, but on a complaint of an assessee, the Commissioner, Income-tax found that the files were in terrible mess and there was want of coordination between I.T.O. and T.R.O. He has also relied on our decision in Patnaik Ajoy Kumar v. Government of India decided on 19.7.1991 in which we have considered various cases on the point and allowed the application against the retirement order. In that case also there was no adverse entry regarding his integrity and integrity was not doubted at any stage. In the Patnaik's case reference has been made to other cases also. In the case of A.K.Ghatak v. Union of India & Ors. (1990 12 ATC 423) decided by the Principal Bench it was held that unverified reports about employees' doubtful integrity where opportunity of representation was not given to the employee regarding unverified reports about the doubtful integrity, such reports cannot be the basis of compulsory retirement. In the said case the Screening Committee came to the conclusion that his was a case of doubtful integrity on two factors: one was the manner in which he handled an important case of search and seizure and the second financing of purchase of a flat allotted to him by the Delhi Development Authority and there was no indication in the screening committee's report that these two factors have been taken from the personal file of the applicant and what really happened that the screening committee itself has referred these factors mentioned above without reference to any material

before them other than some earlier complaints.

Obviously, the facts in this case are quite distinguishable and contrast to those in the application in the instant case in which reference has been made to the general reputation and may be because of the general reputation reference was made to vigilance cases and his integrity was not certified.

5. Similarly, in the case of A.K.Saxena v. Chief Commissioner of Income-tax 1987(5) ATC 779 where also entries were made, there were instructions regarding the entry and the instructions were not followed and the said entry was taken into account, as the employee was not given an opportunity in respect of those instances. In the said case even specific instances were also there. He has also referred to the procedure to be followed in filling up the item relating to integrity. But it has not been brought before us whether the said letter still holds good or not. The said procedure reads as under:

- " i) If the officer's integrity is beyond doubt, it may be so stated.
- ii) If there is any doubt or suspicion, the item should be left blank & action taken as under.
 - (a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report to the next superior officer who will ensure that the follow up action is taken. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he has not watched the Officer's work for sufficient time to form a definite judgement or that he has heard nothing against the officer as the case may be.
 - (b) If, as a result of the follow up action, the doubts or suspicions are cleared, the officer's integrity should be certified and an entry made accordingly in the Confidential Report.

(c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.

(d) If as a result of the follow up action, the doubts or suspicions are neither cleared nor confirmed, the Officer's conduct should be watched for a further period and thereafter action taken as indicated at (b) and (c) above.

(Ministry of Railways' letter No.ED & A/65/
RG/6-47 dated 24.11.65)"

The procedure is quite clear and it itself indicates that at every stage the communication need not be given. The learned counsel made reference to the case of *Union of India v. E.G. Nambudiri*, AIR 1991 SC 1216:

"Entries made in the character roll and confidential record of a Government servant are confidential and those do not by themselves affect any right of the Government servant, but those entries assume importance and play vital role in the matter relating to confirmation, crossing efficiency bar, promotion and retention in service. Once an adverse report is recorded, the principles of natural justice require the reporting authority to communicate the same to the Government servant to enable him to improve his work and conduct and also to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. The superior authority competent to decide the representation is required to consider the explanation offered by the Government servant before taking a decision in the matter. Any adverse report which is not communicated to the Government servant, or if he is denied the opportunity of making representation to the superior authority, cannot be considered against him. See: *Gurdial Singh Fijji v. State of Punjab* 1979(2) SCR 518. In the circumstances it is necessary that the authority must consider the explanation offered by the Government servant and to decide the same in a fair and just manner. The question then arises whether in considering and deciding the representation against adverse report, the authorities are duty bound to record reasons, or to communicate the same to the person concerned..... Reasons are not necessary to be communicated to the Government servant. If the statutory rules require communication of reasons, the same must be communicated out in the absence of any such provision absence of communication of reasons do not affect the validity of the order."

So far as the observations made in the said case are concerned there cannot be any dispute as to the legal proposition regarding entries made in the character roll.

6. Shri Ramamurthy, learned counsel for the respondents contended that an employee can be retired on over-all assessment and that there are many cases in which a person is known to be of bad reputation or his integrity cannot be certified, but instances of the same cannot be given and because of many pull and push it becomes difficult to prove the same, but the fact is obvious and he contended that the case of Pathaik and the cases which have been referred to will not apply in this case.

Shri Ramamurthy contended that the observations made in the Nambudiri's case referred to above will not apply in such cases of compulsory retirement. He relied on Union of India v. M.E. Reddy (1980 2 SCC 15) and particularly the following paragraph was placed reliance:

"Lastly, Mr. Krishnamurthy Iyer, learned counsel for Reddy heavily relied on a decision of the Calcutta High Court in the case of Chief Security Officer Eastern Rly. v. Ajoy Chandra Bagchi (1975) 2 SLR 660. On a perusal of this decision we are of the opinion that this case was not correctly decided as it is directly opposed to the ratio decided in J.N. Sinha's case (supra) where this Court held that the rule in question expressly excludes the principles of natural justice and, therefore, it is manifest that the Calcutta High Court was in error in basing its decision on rules of natural justice. The Calcutta High Court in this case had observed as follows:

"Thus even if the Railway authorities had absolute right to retire the Respondent petitioner subject to the requirements as mentioned hereinbefore and in terms of paragraph 3 of Chapter XVII of the Regulations read with item 6 of the instructions in the Form in Appendix XVIII in the admitted position of the case, viz., certain adverse entries were taken into consideration in having him

retired, the action as taken is thus certainly against all principles of natural justice and norms of fair play and as such the action so taken cannot be supported. The said right under paragraph 3 of Chapter XVII read with item 6 of the instructions in the Form in Appendix XVIII can be used and those principles can be applied or resorted to subject to the principles of natural justice, which incidentally is the restraint put on the pretended misuse of power".

The High Court seemed to rely on certain adverse entries which were taken into consideration when the order of retirement was passed. We have already pointed out relying on the dictum of this Court laid down by Hidayatullah, C.J. that the confidential reports can certainly be considered by the appointing authority in passing the order of retirement even if they are not communicated to the officer concerned. Thus, the two grounds on which the Calcutta decision was based are not supportable in law. For these reasons, therefore, we hold that the decision of the Calcutta High Court referred to above was wrongly decided and is hereby overruled.

He made a reference to the Supreme Court's decision in *Gayanthi Kumar Sinha v. Union of India and others* 1989(9) A.T.C. which he says was not considered by the various Tribunals and in the said case it was laid down that entries based on general assessment on performance need not be communicated. Shri Ramamurthy contended in the said case the applicant's service record indicated deficiency in his functioning and years back one entry indicated that he has become a deadwood. The review committee took up the cases of 19 officers and recommended the applicant alone for retirement and at governmental level the report was duly scrutinised and the order of compulsory retirement was passed. It was held

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that ordinarily for the entries relating to specific instances in the adverse entry the communication thereof is sent to Officer concerned with a view to providing opportunity for him for informing his performance and in the instant case the entries are based mostly on general assessment of performance and the compulsory retirement did not involve any stigma or implication of mis-behaviour on his capacity and as such the compulsory retirement order was not open for challenge.

7. In the instant case as we have noticed there was no reference to any specific case and the claim regarding assessment of which reference to the six vigilance cases was made and one case was still pending and appears in that connection a note was made regarding his reputation and that his integrity was not certified. There was nothing which could have been communicated on which his representation could have been taken on specific instance. In the case of the applicant the general assessment was taken into consideration. It was as a result of general assessment by the screening committee that he was to be retired compulsorily and the government accepted the same. The case of the applicant distinguishable from the other cases referred to earlier, the instant case which involved question of general assessment is covered by the law laid down in the cases of M.E. Reddy and Sinha (supra) and it is not possible to deviate

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from the same in view of the facts and circumstances of this case as stated earlier. Accordingly there is no ground for interference and as such the application is dismissed. However, there will be no order as to costs.

M.Y.PRIOLKAR
(M.Y.PRIOLKAR)
MEMBER (A)

U.C.SRIVASTAVA
(U.C.SRIVASTAVA)
VICE-CHAIRMAN

29.8.91