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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

O.A.NO. 628/88
TR.A.NO.

199

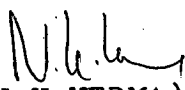
DATE OF DECISION 4.11.1993

Shri Karam Singh Applicant(s)

Versus

Union of India & Ors. Respondent(s)

1. Whether it be referred to the Reporter or not ? ^{no}
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? ^{no}


(N.K. VERMA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, (10)

BOMBAY BENCH, CAMP AT NAGPUR.

Original Application No.628/88.

Shri Karam Singh. Applicant.

V/s.

Union of India & Ors. Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri N.K.Verma, Member(A).

Appearances:-

Applicant by Shri R.J.Kamble.
Respondents by Shri P.S.Lambat.

Oral Judgment:-

{Per Shri M.S.Deshpande, Vice-Chairman} Dt. 4.11.1993

Heard Shri R.J.Kamble, counsel for the
applicant and Shri P.S.Lambat, counsel for the Respondents.

2. By this application, the applicant challenges
the order dated 7.9.1987 by which he stood compulsorily
retired w.e.f. 6.12.1987.

3. The applicant was engaged as a Main Signal Man
Gr.II. On 11.1.1980, he came to be promoted as Main
Signal Man Gr.I. He came to be transferred to Chandrapur
where there ^{were} ~~was~~ ^{residential} no Quarters and he made a representation
against the transfer on 28.4.1981. He was asked to get
his request registered for re-transfer and he was asked
to vacate the quarters at Nagpur. A departmental inquiry
came to be ⁸ initiated against him for non-compliance with
the order directing him to vacate the Quarters which was
passed on 29.3.1982. The applicant had continued in the
Quarters from 1.5.1980. As a result of the departmental
inquiry for not vacating the Quarters he was found guilty
and reduced to the lowest stage permanently by the order
dt. 16.3.1983. The applicant did not challenge this
order by appeal. Penal rent was levied on him despite
the instructions issued in 1963 against charging such
a rent. Second departmental inquiry was initiated

against him on 13.1.1982 on the charges of absence on duty from 11.4.1982 and dis-obedience of the order to do writing work while he was working in the reduced post. That inquiry continued till 23.7.1987. The applicant was found guilty at this inquiry and was punished by withholding of one increment. A third departmental inquiry was initiated against the applicant on 12.1.1984 and was dropped on 2.12.1987, as he had already been compulsorily retired by the order dt. 7.9.1987. The fourth departmental inquiry was initiated against him on 2.1.1986 for unauthorised absence from work. No evidence was recorded at that inquiry, but by the letter dt. 10.12.1987 the applicant was informed that the charges were proved against the applicant beyond doubt, but in view of his pre-mature retirement from Railway service it was decided not to impose the contemplated penalty upon him. The applicant's submission is that the order directing his compulsory retirement was based not on the premise that it was in public interest, but as a punitive measure as the fourth departmental inquiry had been initiated against him and the order cannot therefore be supported and should be quashed.

4. The respondents while denying these allegations urged in their reply to para 6(iii) of the application as follows:-

"The applicant has not disputed the powers of the authority exercised in issuing the above order. But however pleaded that the action should be in the public interest and that the Public interest in relation to Public Administration envisages dispensing the services of those who are inefficient. Hence the Respondents emphatically stated that the punishment awarded to the applicant is on the grounds of inefficiency viz. indisciplined working and

.....3.

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frequent absence from duty tantamounting to leaderless and direction less working of the staff controlled by him thereby evolving unsafe conditions to signalling gears leading to train accidents which may lead to loss of public life and property."

5. The submission of Shri Kamble, learned counsel for the applicant was that it is not necessary to seek elsewhere what was the ground\$ for compulsorily retiring the applicant and the above passage would show that the compulsory retirement was not being done in public interest, but as a punitive measure in respect of the allegations which were made against him in the four departmental inquiries. We inquired from the learned counsel for the respondents if he could produce the minutes of the meeting at which the decision was taken, because in answer to para 6(iv) of the application it was stated in the written statement that it was denied that the impugned order was motivated action out of some rankling against the applicant, but it was the result of joint decision of the Standing Committee nominated by the DRM, consisting of ADRM as Chairman and Sr.DSTE & DPO as Members and hence the prejudice and mala fide intentions were ruled out.

6. The learned counsel for the Respondents stated that the proceedings were missing as this was a old case and that he would not be in a position to make them available to us. Instead he showed us the office note dt. 25.8.1988 regarding the applicant's compulsory retirement in which it was mentioned that in view of the continued bad record and performance of the applicant the committee was appointed to review his case for the purpose of retention or retirement on attaining the age of 55 years/30 years of qualifying service in August, 1987 and it was decide

that his continuation in service beyond 55 years of age was not justified. He^{was} accordingly given a notice vide office letter dt. 7.9.1987. The first paragraph of this note shows that the respondents were motivated by what we have quoted above as being in answer to para 6(iii). Our attention was drawn to para 2046(FR 56) Clause (h) in which it has been mentioned that notwithstanding anything contained in this rule the appointing authority shall if it is of the opinion that it is in the 'public interest' to do so ^{has} if the absolute right to retire any Railway servant giving him not less than three months notice in writing. What the learned counsel for the Respondents emphasised was that the Respondents had the absolute right to do away with the service of the applicant. It must be remembered that this right can be exercised only if it was in the 'public interest' to do so. The learned counsel offered to show us the file relating to the conduct of the applicant during his employment. It must be noticed that it is not our opinion about the performance of the applicant which can be substituted for the action which has to be initiated under the Rules and this was to be done by a Committee to be appointed for determining whether it was in the 'public interest' to retire the applicant. Unfortunately, the minutes of the meeting of that Committee have not been placed before us and it will not be possible for us to ascertain whether the Committee after taking the overall picture into consideration was of the view that it was in 'public interest' to compulsorily retire the applicant.

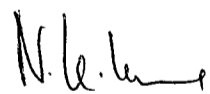
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On the other hand, the extract from the written statement of the Respondents would show that action was being taken against the applicant not in 'public interest' but as a punitive measure for his acts of omission and commission. The committee had to take into consideration these aspects, as well as, the others which might have been favourable to the applicant if it were to arrive at a just decision regarding the retention or otherwise of the applicant in 'public interest'. The Law in this respect is well settled. The power for Compulsorily retiring can be exercised only in 'public interest' and this requirement has not been satisfied in the present case.

7. We, therefore, quash the impugned order dt. 7.9.1987. Since the applicant has already been superannuated, we direct that his entitlements regarding pay and other allowances shall be worked out and paid within a period of 3 months from the date of communication of this order and that his pensionary benefits shall also be revised accordingly.


(N.K. VERMA)
MEMBER (A)


(M.S. DESHPANDE)
VICE-CHAIRMAN

B.