

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.270/86.

Shri Guldip Singh,
Flat No.67,
Block No.9, Sector-3,
Central Govt. Quarters,
Antop Hill,
Bombay.400 037.

... Applicant

V/s.

1. Union of India, through
the Secretary, Ministry
of Shipping & Transport,
Transport Bhavan, New Delhi.
2. The Director General of Shipping,
Jahaz Bhavan, Walchand Hirachand
Marg, Bombay - 400 038.
3. Ministry of Shipping and Transport,
Transport Bhavan, New Delhi.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil,
Hon'ble Member(A), Shri J.G.Rajadhyaksha.

JUDGMENT:

(Per Shri B.C.Gadgil, Vice-Chairman) Dated: 21.10.1987.

The applicant was serving in the office of the Director General of Shipping is challenging his premature retirement on the basis of the notice dt. 21.5.1986 issued under the FR.56 (j).

2. Though a number of contentions were raised in the application, only a few of them have been agitated during the arguments. Before dealing with those points we would briefly give the history of the applicant. The applicant joined his service as LDC on 12.9.1949. On 4.6.1956 he was promoted as UDC. The next promotion as a Care-taker took place on 3.7.1978. Some time thereafter he was promoted on ad hoc basis as an Accountant. However, he was reverted to his substantive post as Care-taker. In the application it is mentioned that the applicant was promoted as a Care-taker on

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10.12.1984. However, that appears to be a mistaken statement. The applicant's birth date is 9.4.1930, he thus completed his 55 years on 8.4.1985. The Director General of Shipping on 21st May, 1986 passed an order under FR.56 (j) of the Fundamental Rules directing that the applicant shall retire from service on the forenoon of the day following the day of the expiry of 3 months computed from the date following the date of service of ^{said} the notice. It is not in dispute that the applicant stood retired in terms of that notice. It is this retirement that is being challenged before us.

Smt. Ganapathy, Learned advocate on behalf of the applicant argued only two points. It is common ground that under Rule 56 (j) the applicant was liable to be retired after he had attained the age of 55 years. The government has issued certain instructions/guidelines on 5th January, 1978. Amongst other things, the guidelines provide that the case of the government servants should be reviewed 6 months before they attain the age of 55 years. In the present case such a review was not made 6 months before his retirement; but it was made subsequently and on the basis of that review the applicant has been ordered to retire prematurely by a notice dt. 21.5.1986. The contention of the applicant is that as the review has not taken place 6 months before 9.4.1985, the Director General of Shipping has no jurisdiction to make any review after the applicant has crossed the age of 55 years. In our opinion, this contention is not well-founded. It is true that in the guidelines it is mentioned that the review can be made 6 months before the date of retirement. However, the

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purpose of the guidelines is to see that any capricious or unfair action is not taken while exercising the powers under Rule.56 (j). What is important is that the said rule provides that a person can be retired after he has attained the age of 55. Thus what is important to be seen is as to whether the retirement takes place after attaining the prescribed age of 55. The process of retirement may begin earlier, however, 6 months prior to retirement. However, it is not a rigid schedule which must be followed before exercising powers under 56(j). This, apart the guidelines that the review taken 6 months before completion of 55 years, would be directory only and it does not take away the right of the department to make such review for the first time even after the government servant has attained the age of 55 years. It is not that the retirement must necessarily synchronise with the date of attaining the age of 55 years. The purpose of Rule 56 (j) is to weed out dead-wood from the service. The process of such weeding out cannot be arrested by giving a mandatory tone to a guideline which only permits the initiation of review 6 months before. Mere delay in initiating the process of review would not take away the right of the government to exercise the powers under the Rule 56(j).

3. Reliance was placed upon the decision of the Supreme Court in the case of State of U.P. v. Chandra Mohan reported in A.I.R. 1977 S.C. 2411. A proviso to Rule 56 (j) was under intrepertation in that case. After holding a review a Government servant was permitted to continue in service. Thereafter, a fresh review was held within a short span and on the basis of that review

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the government servant was prematurely retired. This order was challenged. The Supreme Court held that once a review has taken place, and no decision to retire on that basis has been ordered, the Officer gets a fresh lease of service in the case of one who is completing 50 years of age upto the next barrier of 55 years of age; and if he is again cleared at the point of 55 years of age he continues upto the age of 58 years. The Supreme Court held that this would be the normal rule always, subject to the exceptional circumstances such as revelation of fresh objectionable grounds with regard to the integrity or some such reasonable weighty reason. In our opinion, the above mentioned decision of the Supreme Court is not at all applicable to the facts of the present case. As we have observed above, only one review has taken place under Rule 56 (j) and on its basis the applicant has been made to retire. The question as to whether a subsequent review is permissible or not, does not arise in the present case. However, what is important is that the Supreme Court has laid down that a second review is permissible if fresh material is available. In our opinion, this principle would, in a way, support the contention of the respondent that the time-schedule in the guidelines would be a fixed and rigid one, and that a first review can take place even after a government servant has attained the age of 55 years. As stated above this interpretation of ours is consistent with the principles underlying rule 56(j) viz. to weed out dead-wood.

4. We may with advantage refer to a recent decision of the Supreme Court in the case of A.L.Ahuja v. Union of India reported in A.I.R. 1987 S.C. 1907. The

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Petitioner there was born on 10.2.1922. Under Rule 56(j) he could have been prematurely retired on attaining the age of 50 years i.e. on 10.2.1972. He was made to retire by an order dt. 3.8.1976. The retirement became effective on 5.11.1976. Thus the premature retirement was effected when the applicant had completed 54 years of age. The applicant had contended that he could have been retired only after completing 55 years of age. That contention was rejected and it was found that a person who could be retired on attaining the age of 50 years had been validly retired after he had completed the age of 54 years.

Of course, the question as to whether it was necessary to initiate the review process 6 months before the completion of 50 years of age has not been specifically argued before the Supreme Court. That apart as discussed above we are of the opinion, that a review can be taken not necessarily 6 months before attaining 55 years of age but even thereafter. Thus the retirement of the applicant by a notice dt. 21.5.1986 would not be bad, simply because the review had not taken place 6 months before 9.4.1985.

5. Another contention of the applicant is based upon Note.2 under rule 56(j). That note reads as follows:

"The three months' notice referred to in clauses (j),(k),(l) or (m) may be given before the Government servant attains the age specified in clauses (j) and (k) or has completed 30 years of service specified in clauses (l) and (m), provided that the retirement takes place after he has attained the relevant age or has completed 30 years' service, as the case may be."

The argument is that a notice of retirement must be given 3 months before attaining the prescribed age and that any notice after the Government servant attains the

the age of 55 would be bad. Note.2 is only an enabling provision which permits the issue of notice even before a government servant attains the prescribed age. Of course, it further states that such a notice can be given, at any time provided the actual retirement takes place after he has attained the said age. This note therefore means that a notice can be given before attaining a particular age. However, it does not mean that retirement cannot take place if such a notice is not given earlier. On the contrary, we are of the opinion that it ~~need~~ need not necessarily be given before attaining the age of 55 years, it can be given after a person attains that age, thus there is no substance in the above mentioned arguments of the applicant. The result therefore is that the application fails and is liable to be dismissed. We therefore pass the following orders.

O R D E R

1. The application is dismissed. The interim orders passed by the Tribunal on 2.9.1987 do not now survive in view of this decision. Parties to bear their own costs.

B. C. Gadgil
(B.C.GADGIL)
VICE -CHAIRMAN

J. G. Rajadhyaksha
(J.G. RAJADHYAKSHA)
MEMBER (A).

*Announced in open Court
today.*

21/10/98

P.T.O.