

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

D.A. 381/86

Shri Dinendrakumar Mitra,
Flat No. H-44/7
1st Floor,
Ordnance Factory,
Ambarnath.

.... Applicant

v/s.

1. Union of India,
Standing Counsel
for the Union of India,
M.Karve Marg,
Bombay

2. The Secretary,
Ministry of Defence
Government of India,
New Delhi.

3. Shri M.P. Sharma
General Manager,
Machine Tool Prototype Factory,
Ambarnath.

4. The Chairman,
Head Office,
Ordnance Factory Board,
Calcutta.

.... Respondents.

Coram: Hon'ble Member(A) J.G. Rajadhyaksha
Hon'ble Member(B) M.B. Mujumdar.

Appearances:

1. Mr. S.N. Desai
Advocate for the applicant.
2. Mr. S.R. Atre (for
Mr. P.M. Pradhan)
for the respondents.

ORAL JUDGMENT

Date : 20-10-1987.

(PER: M.B. Mujumdar)

The applicant D.K. Mitra has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging his compulsory retirement under Rule 48 of the Central Civil Services (Pension) Rules, 1972.

2. The applicant was born on 9-3-1933. He was appointed as a Labourer on 24-3-1952 in the Machine Tool Prototype Factory at Ambernath. In due course he was promoted as 'B' grade Supervisor in July, 1977 and to 'A' grade supervisor in May, 1982. By a notice dtd. 4th August, 1986 issued by the General Manager of the Factory, under Rule 48 of the Central Civil Services (Pension) Rules, 1972, the applicant was informed that he shall retire from services on the Forenoon of 5th November, 1986. Accordingly, the applicant retired w.e.f. 5th November, 1986. However, about two weeks before that i.e. on 20th October, 1986 he has filed the present application challenging that order.

3. The applicant had preferred a representation against the order on 20th August, 1986. It was considered by the Representation Committee in its meeting held on 11-12-1986 and rejected. That decision was intimated to the applicant by a letter dtd. 14-7-1987.

4. We have heard Mr. S. N. Desai the learned advocate for the applicant and Mr. S. R. Atre (for Mr. P. M. Pradhan), the learned advocate for the respondents. Mr. Desai urged two points before us:
(i) The impugned order of compulsory retirement was not passed in public interest; and (ii) the representation made by the applicant was not considered by the Representation Committee properly and in accordance with the rules. After considering the relevant record we do not find any substance in any of these points.

5. Regarding the first point, we may point out that the Review Committee comprising of the General Manager, Deputy General Manager and Works Manager (Administration) who was also the Vigilance Officer, in its meeting held between 15-2-86 and 22-2-1986 had considered the cases of 129 employees. As regards the applicant

the Committee observed that he had begun showing decline in his performance and had been displaying only 'Average' capabilities, merely earning a 'Good' grading and a stage was reached ~~while~~ his performance became poor. He had not been found to be carrying out his duties to the desired level. He had been found behaving abnormally with his superiors as well as subordinates and colleagues and he was also representing to higher authorities casting aspersions on his immediate superiors.

6. We have found that the Review Committee had considered the Annual Confidential Reports of the applicant for 5 years prior to its decision. We have also read the Annual Confidential Reports of the applicant for these years. The report for the year 1982 shows that the applicant had displayed 'average capabilities' in the work assigned to him. For 1983 and 1984 also his performance was found 'average'. For the year 1985 the report was that the applicant was not performing his duties quite satisfactorily due to his moody and ~~egoistic~~ approach. He did not carry out his work satisfactorily due to bad temperament. He often argued with superiors on flimsy issues resulting in delay in process of work. On the whole his performance was found 'poor'. It may be noted that the above adverse remarks for all these years were duly communicated to the applicant separately.

7. As already pointed out the Review Committee consisted of Senior Officers of the Factory. There was no scope for alleging any malafides against any of them. The applicant had an opportunity to make a representation against the order dtd. 4-8-86 based on the decision of the Review Committee. He did make a representation to the concerned authorities on 20th August, 1986. That representation was considered by the Representations Committee in its meeting held on 11-2-1987. That committee consisted of the

Secretary (DP&S) and Additional Secretary (DP&S). That Committee considered the case of the applicant in detail as can be seen from the extract of proceedings of that meeting. The Committee also considered the points raised by the applicant in his representation and ultimately found no substance in the representation made by him.

8. In view of the Annual Confidential Reports considered by the Review Committee we do not find that the retirement of the applicant was not in the public interest. The purpose of Rule 48 of the CCS (Pension) Rules is to weed out ineffective employees. If any employee is not found fit to continue in his present post by the Review Committee, he will have no right to ask for his continuation. We, therefore, hold that the premature compulsory retirement of the applicant under Rule 48 of the Rules was in the public interest.

9. Regarding the second point, we may point out that the applicant had made the representation on 20th August, 1986. It is not clear when it was received by the concerned authority or when its examination was completed. But as already pointed out, the representation was considered by the Representations Committee in its meeting held on 11-2-1987 i.e. within 6 months from the date of the representation. This delay cannot be said to be so inordinate as to vitiate its decision. Mr. Desai, learned Advocate for the applicant has relied on the guidelines given at page 384 of Swamy's compilation of Central Civil Services (Pension) Rules, 1972 under the caption "procedure for consideration of representations". The guidelines, no doubt, say that the examination of representation should be completed within two weeks from the date of representation. ^{But} The guidelines nowhere prescribed the period during which the Representations Committee should take a decision on the representation, though it is mentioned in paragraph 3 that the Committee considering the report shall make its recommendation on the representation within

2 weeks from the date of receipt of reference from the Administrative authorities concerned. We do not know when the Committee had received the reference from the Administrative authorities. Apart from this the period of two weeks is obviously only a guideline. Even assuming for the sake of argument that the guideline was not followed that will not vitiate the recommendations of the Representations Committee.

10. Mr. Desai has relied on four judgments of the Supreme Court:

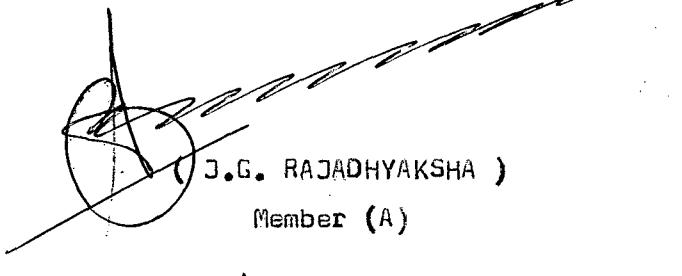
(1) Baldevraj Chedda Vs. Union of India, 1984 FLR 276, 1981, ~~SCC 185(1)~~
(2) Brijbiharilal Agarwal V. High Court of Madhya Pradesh, 1981(42),
FLR 102, (3) Brijmohan Singh Chopra Vs. State of Punjab, 1979, CLR 395,
and, (4) H.C. Gargi Vs. State of Haryana, 1986 CLR 408. He has produced xerox copies of judgments by underlining the observations on which he relied.

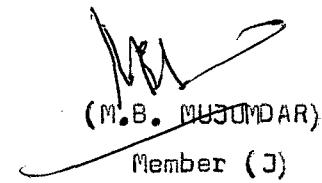
11. In Baldevraj Chedda's case the Supreme Court has pointed out that the exercise of power of compulsory retirement must be bonafide and to promote public interest. We have already referred to the relevant record regarding the applicant and we do not think that the power was exercised by the Review Committee malafide or not in the public interest. In Brijbiharilal Agarwal's case the Supreme Court has observed that it is desirable to make an overall assessment of the Government Servant's record and more than ordinary value should be attached to the annual confidential reports pertaining to the years immediately preceding such consideration. We have already referred to the confidential reports of the applicant for 5 years prior to the meeting of the Review Committee. His performance was found to be average and in one year 'poor'. In Brij Mohan Singh Chopra's case the Supreme Court has referred to the relevant instructions and pointed out that according to the relevant instructions, service record of an employee has necessarily to be considered while taking decision for the premature retirement of an employee and if there was a single

entry casting doubt on the integrity of an employee, the premature retirement of such an employee would be in public interest. It is true that in the case before us there is no entry in the confidential report regarding the applicant doubting his integrity, but that will not mean that he should not have been compulsorily retired when his performance was found average or poor. In H.C. Gargi's case the Supreme Court held that there was no justification for Gargi's retirement in public interest on the basis of his annual confidential reports and overall performance. But that is not the case in the present case before us.

12. It can be seen from each of these cases that these cases were decided on the facts and circumstances of each particular case. After taking an overall view about the case of the applicant, we do not find that his premature compulsory retirement was improper or illegal.

13. We, therefore, dismiss the application with no order as to costs.


(J.G. RAJADHYAKSHA)
Member (A)


(M.B. MUJUMDAR)
Member (J)