

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A. 485/86

M. Pauldas,
Ashirwad Building,
Room No.9, Opp. Ganeshwari Post,
Koleswadi, Kalyan,
Dist. Thane,
Maharashtra State.

... Applicant

vs.

Deputy C.S.T.E's Office,
S & T Workshop,
Central Railway,
Byculla,
Bombay.

... Respondent

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

Appearances:

1. Mr. D.B. Watharkar,
Advocate, for the
applicant.
2. Mr. N.R. Bhavsar (for
Mr. D.S. Chopra) for
Respondent.

ORAL JUDGMENT

Date: 22-9-1987

(Per M.B. Mujumdar, Member(J))

In this application, under Section 19 of the Administrative Tribunals Act, the applicant has challenged an order passed on 24-7-1986 compulsorily retiring him from service w.e.f. the expiry of three months from the date of the service of the order on the applicant.

2. The relevant facts for the purpose of this judgment are these: The applicant had joined service with the respondent in May, 1956 and at the relevant time he was working as High Skilled Instrument Fitter Gr. II in the S & T Workshop, of the Central Railway at Byculla. His date of birth is 1-7-1931 and

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hence he completed 55 years on 30-6-1986. Hence as per the rules the Asstt. Personnel Officer(S&T) submitted a note for reviewing the cases of those who had attained 55 years ~~of~~ completed 30 years of service for the purpose of deciding whether they should be retained in service. Necessary details regarding 33 employees including the applicant were furnished. The cases were considered by Chief Signal Telecommunication Engineer, Chief Signal Telecommunication Engineer(Construction) and Deputy Chief Personnel Officer for the non-gazetted staff. The Confidential Reports and service records were also considered and it was decided that all except the applicant and two others may be continued. Thereafter, the impugned order dtd. 24-7-1986 was passed by the S.S.T.E(W/Shop)Byculla who was the appropriate authority so far as the applicant was concerned. The order reads as follows :

"NOW THEREFORE, in exercise of the powers conferred by clause h(II) of Rule 2046.RII. para 2(2) of section I of Railway Ministry's letter No.E48CPC/208 dtd. 8-7-1950 the S.S.T.E (W/Shop).BY (Appropriate authority) hereby gives notice to Shri M.Pauldas, H/S Fitter Instrument Gr.II that he having already attained the age of fifty five years on the 01/07/1986, shall retire from service on the forenoon of the day following the date of expiry of three months computed from the date following the date of service of this notice on him"

3. The order was communicated to the applicant on the same day and he was asked to prefer an appeal, if any, against within a period of three weeks of receipt of the same. The applicant preferred an appeal on 28-7-1986.

As required by the rules the appeal was considered by the second review committee which recommended unanimously that the appeal preferred should be rejected. We may point out

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that the committee had considered the confidential reports regarding the applicant for the previous 5 years and his entire service record while rejecting the appeal. The papers were sent to the General Manager who on 3-10-1986 agreed with the recommendations of the second review committee. Again as per the rules, the matter was referred to the Railway Board and the Railway Board also upheld the decision of the authorities to compulsorily retire the applicant prematurely.

4. The applicant has challenged the order passed on 24-7-1986 which we have quoted earlier. While doing so he was referred to the order passed in a departmental enquiry held against him. In an enquiry the Inquiry Officer had held that the charges of insubordination and misbehaviour with the Shop Supervisor were proved against the applicant. The findings were accepted by the disciplinary authority who imposed the penalty of compulsory retirement from the service upon the applicant by the order dtd. 13-8-1985. The applicant had preferred an appeal against that order on 3-9-1985 and the appellate authority reduced the penalty of withholding of the next increment of the applicant for a period of two years with cumulative effect.

5. Initially, there was some confusion because we found that on 21-7-1986 the SSTE(W/Shop) Byculla had passed a similar order compulsorily retiring the applicant after the expiry of three months period from the date of service of the order. That order was cancelled by another order dtd. 24-7-86. We find, after hearing the advocates, that the order dtd. 21-7-1986 was required to be cancelled because a wrong clause of the rules was mentioned therein. The proper clause was Rule 2046 R II (h)(ii) but by mistake clause (k) of that rule was mentioned in the order dtd. 21-7-1986

6. We have stated the above facts from the record which was made available to us. The applicant's advocate Mr. Watharkar was given sufficient time to go through the record. After going through the record we again heard him.

7. After considering the ~~entire~~ entire record we do not find that the impugned order dtd. 24-7-1986 suffers from any infirmity. The proceedings of the second review committee show that the confidential reports of the applicant for the period 1982-86 as well as his entire service record was taken into consideration. For every year from 1982 to 1986 the applicant was given the remark "average". Then during his career, in all seven penalties were imposed upon him. As already pointed out, by holding a departmental enquiry the applicant was compulsorily retired but that penalty was reduced on appeal to withholding of one increment for two years with cumulative effect. The record shows that this reduction was also taken into account and not the original order of penalty of compulsory retirement. Rule 2046 (h)(ii) of the Railway Establishment Manual under which the order in question is passed confers an absolute right on the appointing authority, if it is of the opinion that it is in the public interest to do so, to retire any railway servant like the applicant by giving him a notice of not less than three months in writing after he has attained the age of 55 years.

8. We, therefore, find that the impugned order passed by SSTE(W/Shop) Byculla on 24-7-1986 deserves to be upheld both on facts and law.

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

(J.G. RAJADHYAKSHA)
Member(A)

(M.B. MUJUMDAR)
Member(J)