

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr. Application No. 262/86

A. Manickavasagam Pillai,
C/o. Miss R.V. Sondur,
Advocate,
D/2, Jumbodarshan Society,
Koldongri No.2,
Andheri(E),
Bombay - 400 069.

... Applicant
(Original Petitioner)

vs.

Union of India, through
The Regional Director,
Regional Metereological Centre,
Colaba,
Bombay - 400 005.

... Respondent.

Coram : Hon'ble Member(A) S.P. MUKERJI
Hon'ble Member(J) M.B. MUJUMDAR.

Appearances :

1. Miss. R.V. Sondur,
Advocate
(with Mr. P.R. Baldota)
Advocate.
2. Mr. J.D. Desai (for
Mr. M.I. Sethna)
Advocate for the
Respondent.

JUDGMENT

Date: 8-1-1988

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

The applicant's Writ Petition No. 507/82 filed in the High Court of Judicature at Bombay is transferred to this Tribunal under Section 29 of Administrative Tribunals Act, 1985.

2. The Main point to be considered in this case is whether the order passed by the Respondent on 22-7-1976 compulsorily retiring the applicant from service, in exercise of ~~his~~ powers under Rule 56(j)(1) of the Fundamental Rules is proper and legal.

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3. The applicant had joined as an Observer in the Indian Meteorological Department in 1945. In due course he was promoted as Scientific Assistant which is a Class III post. In 1962 he was confirmed in that post. By an order dtd. 31-7-1975 he was promoted as Professional Assistant, which is a Class II post in an officiating capacity and he joined that post on 18-8-1975. By an order dtd. 22-7-1976 ^{passed by} the Director General of Observatories in exercise of the powers conferred upon him under Rule 56(j)(i) of the Fundamental Rules, the applicant was directed to retire from service with effect from the date of expiry of three months from the date of the service of the order, as he had attained 50 years on 10-6-1974. The applicant has challenged that order in this case.

4. After receipt of the above order the applicant had an interview with the Director General of Observatories. He explained his difficulties to him and requested to revoke the compulsory retirement order and revert him to his substantive post of Scientific Asstt. Thereafter another order dtd. 28-8-1976 was passed revoking the previous order and directing that the applicant can continue in Government service if he gave willingness to work in the substantive post of Scientific Asstt. and gave a written request for such reversion. The order further stated that the applicant would not be eligible for promotion after reversion and would retire from the same post, viz. Scientific Asstt. Accordingly on 28-8-1976 the applicant gave in writing that he was willing to be reverted to the substantive post of Scientific Asstt. and work in that capacity.

5. In spite of the said writing he continued making representations. However, subsequently the policy was changed and the case of the applicant was again reviewed along with other

officials and he was promoted to the post of Professional Assistant in August, 1979. While he was working in that capacity and when only a few months were left for retirement, he filed the present petition ~~application~~ in the High Court on 2nd March, 1982. In the petition he has challenged the order of compulsory retirement and requested that he should be given seniority as Professional Asstt. with effect from his original appointment to that post on 18-8-1975, by ignoring the period of reversion.

6. The respondents have filed ^a ~~their~~ detailed affidavit of Shri P.K. Mishra, Regional Director working in the Regional Meteorological Centre at Colaba, Bombay. Therein he has explained how and why the order of compulsory retirement was passed as well as the subsequent developments.

7. In the writ petition the applicant has challenged the order of compulsory retirement on three grounds, (i) Since 18-8-1975 the applicant was holding the post of Professional Assistant which is a Class II post only on officiating basis and hence he could not have ^{been} compulsory retired under FR 56(j)(i). (ii) Even assuming the said rules applies, the applicant could not have been compulsorily retired more than two years after he had attained the age of 50 years. (iii) The real motive for the order of compulsory retirement was to penalise him for having requested cancellation of his transfer and hence the said order is mala fide and illegal. These are the three grounds on which the applicant had challenged the impugned order of compulsory retirement as can be seen from para 6 of the Writ Petition.

8. For understanding the first ground it is necessary to quote Rule 56(j)(i) of the Fundamental Rules :

"56(j) Notwithstanding anything contained in this rule the appropriate authority shall, if it is of the opinion that it is in public interest to do so have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three month's pay and allowances, in lieu of such notice."

(i) If he is in Class I or Class II service or post and had entered Government service before attaining the age of thirty five years after he has attained the age of fifty years."

9. In Union of India vs. K.R. Tahiliani, AIR 1980 S.C. 953847 the Supreme Court had held that Rule 56(j)(i) did not cover officiating or temporary employees. Relying on that judgment, advocate for the applicant had first submitted that as the applicant was holding Class II post on an officiating basis when the order of compulsory retirement was passed, the order was bad in law and hence liable to be set aside or ignored.

10. The applicant has referred to the judgment even in the petition. However, during the course of the argument when it was pointed out to the applicant's advocate that the said judgment of the Supreme Court has been recently set aside by the Supreme Court itself he made some research during the recess and then fairly conceded that the said judgment is specifically over ruled by the Supreme Court by a larger Bench of the Supreme Court in A.L. Ahuja v. Union of India, AIR 1987 SC 1907. The judgment in A.L. Ahuja's case shows that the earlier judgment in K.R. Tahiliani's case is specifically over ruled and it is now held that Rule 56(j)(i) (as it stood before the amendment in 1980) did cover the cases of the Government servants who at the relevant time were in Class I or Class II servants post whether substantively, temporarily or on officiating basis. In view of the above position the main force in his argument was lost.

11. Regarding the second ground that the applicant could not have been retired two years after attaining age of 50 years also we do not find any force in it. Admittedly the applicant had attained the age of 50 years before the impugned order was passed. There is nothing in the rule in question which shows

that a Government officer cannot be compulsorily retired under that rule a few years after he attains the age of 50 years.

12. Regarding the third ground we point out that the respondents have given the history about the applicant's behaviour since 1974 in para 4 of the affidavit of P.K. Misra. It is like this: The applicant was initially promoted to the post of Professional Assistant in June, 1974. However, as it involved a transfer to another place the said promotion was refused by the applicant. Again he was offered promotion in June, 1975 to some post at Ahmedabad but as he was stationed at Bombay for more than 30 years since joining the service he requested for cancellation of his posting at Ahmedabad. The request was not acceptable to the Administration and hence the applicant declined the promotion. Again in August, 1975 he was promoted to the same post and posted at Nashik, but the applicant represented against that posting on the ground of domestic and other reasons. When he met Director General of Observatories a lenient view was taken and the transfer on promotion was cancelled and he was retained as Professional Assistant at Bombay. In June, 1976 the applicant was transferred to Bhuj but on receiving the order he proceeded on leave. He was granted medical leave upto 7-4-1976 and for another month for medical treatment at Bombay. However, he again applied for extension of leave for another month without producing a medical certificate. The applicant was therefore asked to appear before the medical authorities of the J.J. Hospital for opinion. The Superintendent of the said Hospital opined that the applicant was fit to perform duties and consequently he was directed to join duty at Bhuj. However, instead of complying with the said direction he again asked for extension. Though that request was not granted, on a further appeal he was again referred to the Superintendent of J.J. Hospital for

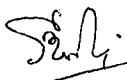
another medical opinion. The Superintendent diagnosed the petitioner's ailment as Frozen Shoulder and recommended treatment for one month. On the basis of the said recommendation the applicant was granted leave upto 6-7-1976. As the applicant had not challenged the impugned order of compulsory retirement, ^{have} on other grounds, the respondents ~~did~~ not produce the proceedings of the Review Committee on the basis of which the order of Compulsory retirement was passed. But even from the above facts stated by the respondents in the affidavit of Shri P.K. Misra, which were not seriously disputed before us, we are of the view that the circumstances did justify the order of compulsory retirement. When a Government employee goes on refusing or avoiding his transfer, that too on promotion, on one ground or the other, the authorities will be justified in holding that it will not be in the public interest to retain him in service. Hence we are of the view that even on facts, the impugned order is not liable to be set aside.

13. Then the learned advocate for the applicant submitted that the applicant was promoted as Professional Assistant many times earlier as well as subsequently in 1979, ^{and this} ~~which~~ shows that the order of compulsory retirement was not justified. But the promotion was to a post which was a non selection post. In such promotions seniority is the main consideration. Hence the fact that he was promoted earlier and later will not help the applicant in getting the order of compulsory retirement quashed.

14. We therefore hold that the order of compulsory retirement passed on 22-7-1976 was legal and proper. The other reliefs claimed by the applicant, viz. that his seniority should be fixed by ignoring that order and ~~that~~ the period during which he worked as Scientific Assistant from 25-9-1976 to 20-8-1979, are consequential in nature depending on the main

prayer regarding the order of compulsory retirement. Hence the applicant is not entitled to any reliefs claimed by him.

15. We, therefore, dismiss the application with no orders as to cost.


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(S.P. MUKERJI)
MEMBER(A)


(M.B. MUJUMDAR)
MEMBER(J)