

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 426 of 1996.

Dated this 26th, the day of July, 2001.

S. S. Kushwaha, Applicant.

Shri M. S. Ramamurthy, Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri M. I. Sethna through Advocate for the
Shri V. D. Vadhavkar, Respondents.

CORAM : Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman.

Hon'ble Shri V. K. Majotra, Member (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other
Benches of the Tribunal ?

(iii) Library.

V. Majotra

(V. K. MAJOTRA)
MEMBER (A).

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Hon'ble Shri V. K. Majotra, Member (A).

S. S. Kushwaha,
Officiating Upper Division
Clerk in Pasting Section,
Regional Office,
Employees State Insurance
Corporation, Lower Parel,
Panchdeep Bhavan,
N.M. Joshi Marg,
Bombay - 400 013.

... Applicant.

(By Advocate Shri M. S. Ramamurthy)

VERSUS

1. Union of India,
through the Secretary,
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi - 110 001.
2. The Director General,
Employees State Insurance
Corporation, Panchdeep
Bhavan, Kotla Road,
New Delhi - 110 001.
3. The Regional Director,
Employees State Insurance
Corporation, E.S.I.C.,
Panchdeep Bhavan, N.M. Joshi
Marg, Lower Parel,
Mumbai - 400 013.

... Respondents.

(By Advocate Shri M.I. Sethna through
Ld. Proxy Counsel, Shri V.D. Vadhavkar)

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O R D E R

PER : Shri V. K. Majotra, Member (A).

The application has been made against Order No. 8 of 1996 dated 19.01.1996 (Exhibit 'A') read with Order No. 52(A) of 1996 dated 26.03.1996 (Exhibit 'B') seeking to compulsorily retire the applicant w.e.f. 28.05.1996 Forenoon. The main ground taken on behalf of the applicant is that the Respondent No. 3, who has passed the orders, compulsorily retiring the applicant, had relied on stale matters pertaining to the years 1979/1980, as set out in memorandum dated 01/02.11.1995 (Exhibit 'C'). The Learned Counsel for the applicant stated that the respondents have wrongly contended that in Criminal Case No. 27924/79 the applicant has been convicted on 24.10.1979 and imposed a fine of Rs. 25/- and in the event of failure to pay, five days imprisonment. Whereas, the applicant does not have information about the remaining criminal cases against him, the respondents have not stated conviction in any one of those matters or even their present status.

2. The Learned Counsel for the respondents admitted that the respondents had erroneously believed that the applicant had been convicted in Criminal Case No. 27924/79. Actually, the case is pending. As regards the other cases, the Learned Counsel only stated that the applicant should have furnished detailed information regarding those cases.

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3. We have gone through the Annual Confidential Reports and records relating to the review committee meeting held on 08.01.1996 under F.R. 56 (j)/48(1)(b) of C.C.S. (Pension) Rules, 1972 and other related records. In J.T. 1992 (2) SC 1 (Baikuntha Nath Das & Another V/s. Chief District Medical Officer, Baripada & Another, the Hon'ble Supreme Court has laid down the following principles in matters of compulsory retirement :-

- "(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) *mala fide* or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
- (iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
- (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above."

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We find that the respondents have, while passing the impugned order, placed reliance on 90 different cases against the applicant under various sections of the I.P.C. as also conviction in Criminal Case No. 27924/79 dated 24.12.1979. When the Learned Counsel of the respondents has categorically admitted that whereas the respondents were under a wrong impression that case No. 27924/79 had resulted in conviction of the applicant and the other criminal cases are still pending, we hold that the impression of conviction of applicant in case No. 27924/79 is certainly ~~weighed~~ ^{fact} with the Review Committee. The present case is liable for dismissal on this solitary ground of according consideration to a conviction in a criminal case which just does not exist.

4. The applicant has raised quite a few other grounds in the O.A. We are not giving any consideration to the other grounds, as stated above. Consideration of a false ~~fact~~ ^{fact} of conviction of the applicant in a criminal case has been held sufficient to quash and set aside the impugned order.

5. Accordingly, we quash and set aside the impugned order dated 26.03.1996 (Exhibit 'B') leaving it open to the respondents to proceed further as per law and relevant rules, considering as if conviction in Criminal Case No. 27924/79 does not exist. No costs.

V.K. Majotra
(V. K. MAJOTRA)
MEMBER (A).

Lakshmi Swaminathan
(Smt. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN.