

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 775 of 2000.

Dated this 10th, the Friday day of October, 2003.

Shri P. V. George,

Applicant.

Shri P. A. Prabhakaran,

Advocate for
Applicant.

VERSUS

Union of India & Another,

Respondents.

Shri R. R. Shetty,

Advocate for
Respondents.

CORAM : Hon'ble Shri Justice B. Panigrahi, Vice-Chairman.

Hon'ble Shri S. P. Arya, Member (A).

- (i) ✓ To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ? X
- (iii) Library.


(B. PANIGRAHI)
VICE-CHAIRMAN

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 775 of 2000.

Dated this 10th the Friday day of October, 2003.

CORAM : Hon'ble Shri Justice B. Panigrahi, Vice-Chairman.
Hon'ble Shri S. P. Arya, Member (A).

Shri P. V. George,
6-C, 'Kailas'
B.A.R.C. Quarters,
Anushakti Nagar,
Mumbai - 400 094

...

Applicant.

(By Advocate Shri P. A. Prabhakaran)

VERSUS

1. Union of India through
The Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
C.S.M. Marg,
Mumbai - 400 039.
2. The Director,
Bhabha Atomic Research Centre,
Trombay,
Mumbai - 400 085.

... Respondents.

(By Advocate Shri R. R. Shetty).

O R D E R

PER : Shri Justice B. Panigrahi, Vice-Chairman.

In this case the applicant had challenged the validity, propriety and legality of the order passed by Respondent No. 2 on 02.08.2000 vide exhibit 'A' and the order passed by the authorities on the representation submitted by the applicant vide order no. 15/4(6)/00/BARC/R&D-1/357 dated 27.03.2001 rejecting the applicant's representation.



....2

2. The factual matrix leading to this case is as follows :

The applicant entered into service under the Respondents as a Scientific Assistant (B) on 28.03.1972. In course of time he was promoted and appointed as a Scientific Officer (C). It is alleged in this case that applicant had been performing duties to the best of his abilities and capacity assigned to him and he used to satisfy the authorities with desired results in the research work and worked till about 1996. The applicant has claimed to have been dejected as his case for promotion was not duly considered by the respondents which resulted in mental disorder. He felt mentally sick, diffident and, therefore, could not attach much importance to work because of such mental depression. The applicant was communicated in 1995-96 an adverse entry in the ACR. that his performance was below expectation/standard/result, which is narrated here below :

"(A) 04.09.95

The applicant received a D O letter from Head Metallurgy Division (Now Material Science Division) reading thus :

Sub : Sol-Gel Synthesis of Silica
Ceramics by Hydrolysis-Poly-
condensation-Ageing of
Tetraethyl Orthosilicate
(TEOS)

"Please find below the experimental programme for the month of September, 1995. Hope that your progress in experimentation for the "preparation of Monolithic Silica shapes by Hydrolysis-polycondensation reactions of Tetraethylorthosilicate (TOES)" has been good. Based on the knowledge gained therefrom you may pursue the following :

...3



- (i) Optimisation of (a) composition, (b) Hydrolysis-Polycondensation-Ageing conditions, and (c) Heat treatment for preparing Silica Monoliths.
- (ii) Use of Silica sols as inorganic binder for fabrication of Silica crucibles and boats.

Please conduct these programmes in the month of September 1995. Please submit a report incorporating the results of the work carried out between 12.7.95 and 25.9.95. This will be included in the quarterly report July to September of the Division."

Similarly, he was communicated through a letter dated 19.02.1998 as follows :

"Shri P.V. George, SO(SC), ceramic Science Section, Material Science Division has submitted confidential report for the aforementioned periods on 3.2.1998. The delay in submission of the report for the period 1997-98 is noted.

The reports given by the officer are not authentic. The officer did not carry out the work which has been reported in his report. He was assigned the task of preparation of Silica Monoliths by the solgel technique but he did not attend the assigned task.

Shri P.V. George is hereby informed that his performance during the periods covered under the aforementioned reports has been unsatisfactory and he has been assessed accordingly. He has earlier served with memos for unsatisfactory performance. He, in his own interest, is again asked to take up his work more seriously and improve upon his performance."

The authorities for the third time communicated him in the following manner :

"Shri P.V. George, SO (C) Ceramic Science Section in Materials Science Division has not been performing his duties satisfactorily. The report under review, does not contain any experimental result to establish its veracity and further that it is not the report for research activities pertaining to the above mentioned

...4

period. The contents of his report has remained similar for the past few years. His work output is extremely low. His interaction with other colleagues is minimal. Earlier, he was informed about his poor performance and was asked to improve his performance.

He is once again advised that in his own interest he should strive to improve upon his shortcomings, work in the area assigned to him and show definite results.

As some abnormalities are seen in his behaviour, he is also advised to meet Dr. Patkar, Medical Division for medical counseling."

After he was communicated the impugned order of compulsorily retirement from service, his wife submitted a representation for reconsideration of her husband's case, but ofcourse, such representation also did not evoke any response. Finally, he filed the present case.

3. The respondents have filed their Written Statement pursuant to the application in which they claimed that the applicant could not have asked for promotion since his performance had steadily deteriorated, his contribution to scientific research output was literally nil. Time and again the applicant was cautioned for giving better output and improve his performance by oral as well as written communication. Despite such communications, he had proved himself useless in the department. Therefore, the authorities, as per guidelines stipulated in F.R. 56 (J) considered the applicant's utility in the department and found him thoroughly unsuitable for further retention in service. The Screening Committee/Reviewing Committee was convened wherein the Confidential Report/dossiers of the applicant was considered. His performance was not upto the mark which was reflected in the A.C.Rs. of 1996-97 and 1997-98, which was communicated to him vide letter dated

19.02.1998 and it was acknowledged by him on 20.02.1998. Even his performance was not upto the mark. Screening Committee/Reviewing Committee decided to keep the applicant in close observance for some more time and review his case in the next year before making its recommendations on his further retention or otherwise in service. Thus, hoping once again that the applicant would establish better performance; the Screening Committee again sat for the third time in the year 2000 in which the applicant's suitability to retain in service was considered. It was noticed that he did not yield the desired level of work. He also performed much below the minimum standard expected of a Scientific Officer. After looking to the dossiers, the Screening Committee/Reviewing Committee came to the conclusion that the applicant was unfit for further retention in service and accordingly recommended his pre-mature retirement from Government service. The Reviewing Committee consisted of Secretary, Department of Atomic Energy and Joint Secretary, Department of Space, Bangalore. The said Review Committee, on perusal of all the records pertaining to the case, alongwith the Annual Confidential Report Dossiers of the applicant, concurred with the recommendations of the Screening/ Review Committee by prematurely retiring the applicant from service. As the applicant belonged to Group 'A' category, the Appointing Authority, therefore, sent the matter to the President of India. The authorities, namely the Prime Minister and the President of India, on the basis of the recommendations of the Review Committee, approved the premature retirement of the applicant from service. Even though number of representations had been filed but this did not yield

3

any result other than rejection. The applicant's wife, in a previous occasion, filed a case in this Tribunal but her prayer also did not deserve any consideration. The respondents have stated in their Written Statement as follows :

"The decision to retire the Applicant has been taken only after observing his performance and contribution to the organisation over a reasonable period of time. The unsatisfactory performance of the Applicant over the period has been time and again communicated to the Applicant. The Applicant does not seem to have taken any of these communications seriously. It is however, true that the Applicant was advised to seek medical help. This suggestion was put forth purely in an advisory nature, vide note dated 15.3.2000 (Exh.A-3 to the O.A.) alongwith the communication of adverse entries in his Confidential Report for the period 1999-2000. This was done because apart from his inefficient/ineffective and incompetent way of functioning, the Applicant started manifesting certain abnormal behaviour while in office. The Applicant was never assumed to be mentally sick in toto by the Respondents. The advice to meet the Doctor for seeking medical counselling was given only to help him to overcome the temporary mental or emotional stress, if any, felt by the Applicant. If at all the Respondents doubted that the Applicant's mental sickness interfered with discharge of his day to day duties, then the Applicant would have been referred to a Medical Board to assess his suitability or otherwise for continuation in service as per the Central Civil Services (Medical Examination) Rules, 1957 and would not have been advised to consult a Psychiatrist."

Mr. P.A. Prabhakaran, Learned Counsel appearing for the applicant has submitted that the order of compulsory retirement is harsh, unreasonable and illogical. It has been further stated that as per guidelines of the Government, the time when the Review Committee shall take its decision has been noted. In this case, the authorities had not followed the said guidelines enumerated under Appendix 10 of C.C.S. (Pension) Rules. It was

emphasized by him that ordinarily the case of review of a Government Servant is being considered when he complete 50 and 55 years. In this case, once he was allowed to completed 50 years, it is deemed that the authorities have allowed him to continue for a further period of five years and in between, the authorities have no power to take a decision of premature retirement of the applicant. It is further submitted that the applicant was found otherwise capable but for his mental depression in recent times, he was therefore not able to satisfy the authorities with the desired results. Even the authorities suggested for medical treatment through a Psychiatrist (Dr. Patkar). It is submitted that till date the applicant has been taking medicine and has substantially improved. In such situation, they should have considered the provisions of 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985'. It is further argued that if a person acquired disability during his service, he cannot be allowed to suffer. It is the duty of the employer to provide him the same pay scale and service benefit by shifting him to some other post. In support of his contention, he placed reliance on a judgement reported in 2003 (1) Administrative Total Judgements page 141 in the case of Hasan Khan V/s. Union of India & Others.

4. We have carefully gone through the judgement. The facts and circumstances stated in the aforesaid judgement was quite distinguishable from the present facts. There the applicant had suffered from encephalitis sequale which will impair his working capacity and in the aforesaid case he had to submit before the Medical Board for thorough examination. In the present case the

fact of applicant's disability was not taken into consideration but on the basis of his past performance during the period 1995 onwards it was noticed systematically his performance was even below the standard. From the A.C.R. entries for the period 01.02.1999 to 31.01.2000 it has been reflected as follows :

"During July-Sept. 1995, Shri George was asked to pursue a programme on solgel synthesis of Silica monoliths and ceramics. Detailed programmes were devised and given to him. After a few initial experiments, he stopped working on this programme."

Similarly, for the period 1998-99 it has been recorded as follows:

"'C' grading is accepted. The officer has to be informed on his poor performance by a memo"

For the period 1997-98 it is written grade 'B'. The officer has been informed about his unsatisfactory performance. 'B' Grade is recommended.

For the period 1996-97 he has been recorded 'Average' and graded 'B'. It is very difficult to motivate him to work.

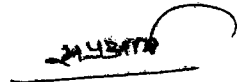
Therefore, on perusal of the record it appears that he has been systematically not showing any performance whatsoever to prove his worth for retention in service. The Learned Counsel appearing for the applicant, Shri P.A. Prabhakaran, has then relied upon a judgement reported in 2003 (1) SC SLJ 300 in the case of Kunal Singh V/s. Union of India & Another but we find the facts of that judgement are not similar to the present case.




In this case, only after over-seeing his performance the authorities have formed an opinion that in public interest he should be compulsorily retired from service. Such compulsory retirement shall not however be construed as a stigma. Since the authorities were not inclined to retain the applicant in service beyond 50 years by invoking FR 56 (I)(j) which provides absolute unqualified and plenary right, therefore, such decision is not open to judicial review.

5. Learned Counsel for the Applicant, Shri Prabhakaran, while winding up his argument, has greatly stressed on the provisions of Appendix 10 of C.C.S. (Pension) Rules and said that the decision of the Review Committee was not taken within the time schedule noted ^{for} review. Accordingly, the order also on that ground is invalid. We notice there is hardly any substance in the aforesaid submission. Since these are all instructions which have no statutory sanction but in the guise of advice, merely the time schedule indicated therein was not strictly followed thereby it cannot be said that the decision taken by them had suffered from the vice of illegality.

6. From the above conspectus of the case and after careful consideration of the material placed before us, we found there is hardly any merit in this application. Accordingly, it is dismissed. No order as to costs.


(S. P. ARYA)
MEMBER (A).


(B. PANIGRAHI)
VICE-CHAIRMAN

os*