

Registered A/D

INTERIM ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

11th Floor, Commercial Complex(BDA),
Indira Nagar, Bangalore.38.

Tuesday, the 24th June, 1986

Dated: 25.6.1986.

PRESENT

The Hon'ble Member(J) ... Sh.Ch.Ramakrishna Rao,
The Hon'ble Member(A) ... Sh.L.H.A.Rego.

IN APPLICATION NO.618 of 1986. (F)

Babu Shariff
C/o M/s K.R.D.Karanth &
M.S.Bhagawath,
Advocates, 32 Mangalnagar,
Sankey Road Cross,
Bangalore-560 052.

... Applicant.

Versus

1. Telecom. District Engineer,
Davanagar - 577 001.
2. Secretary to Min. of Communications,
New Delhi. ... Respondents.

In the above application, this Tribunal has passed the
following order:-

Shri M.S.Bhagawath, counsel for applicant present.
Shri Vasudeva Rao, Advocate appears on behalf of Sh.Padma-
rajaiah, counsel for Respondents. Shri Bhagawath prays for
adjournment on personal grounds. Shri Vasudeva Rao has no
objection. The application is, therefore adjourned to 3.7.86.
Shri Bhagawath requests that the Interim Stay already granted
by us ~~order~~ may be continued until further orders. Since
the operation of the order/s of stay granted by us ^{earlier} expires
today, we extend the stay of the operation of the impugned order
until further orders.

Given under my hand and the seal of this Tribunal, this
25th day of June, 1986.

R/16
O/C
REGISTRAR.



Smt. S.
P. Bhagawath

Jessica
26.6.86

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE.

DATED THIS THE EIGHTH DAY OF SEPTEMBER,
NINETEEN HUNDRED AND EIGHTY SIX.

Present: Hon'ble Shri Ch. Ramakrishna Rao, Member (J)
and
Hon'ble Shri L.H.A. Rego, Member (AM).

Application No. 618/86

Shri Iqbal Sheriff,
Sub-Inspector,
Telegraphs,
Davanagere Telegraph
Sub-Division,
D A V A N A G E R E .
(Shri K.R.D. KARANTH, Advocate)
Shri M.S. BHAGWATH, Advocate
Vs.Applicant.

1. Telecom District Engineer,
Davanagere-577 001.

2. Secretary to Ministry
of Communications,
New Delhi.

(Shri M.S. Padmarajaiah,Respondents.
Senior Central Govt. Standing Counsel, Advocate).

The application has come up for hearing before
the Court on 11.7.1986 and this Tribunal made the
following:

JUDGMENT

DELIVERED BY SHRI CH. RAMAKRISHNA RAO, MEMBER(JUDICIAL)

The target of attack in this application is the order dated 27-2-1986 passed by the first respondent under Rule 48(1)(b) of the Central Civil Services (Pension) Rules, 1972 (Pension Rules, for short) retiring the applicant from service on 27-5-1986(A.N.) on completing 30 years of service qualifying for pension. The facts giving rise to the application are briefly as follows:

The applicant was appointed on 22-2-1956 as a Line Man in Bangalore Division and was placed in charge of work parties relating to maintenance and construction of lines and cables since 1958. He worked in several capacities until 1-12-1965 when he was promoted as a Sub-Inspector (SI) and he joined the post of SI of Telegraphs at Tumkur on 4-1-1986. In 1979 the applicant was given promotion as officiating Line Inspector (LI) and he officiated in that capacity for about 1 year and 8 months earning one increment. He was reverted as SI for want of vacancy. He served in all the posts he held during the three decades to the best of his ability. An order was however passed by the first respondent on 27-2-1986 retiring him from service prematurely with effect from 27-5-1986. Aggrieved, the applicant has filed this application.

C.W.L

2. The thrust in the argument of Shri K.R.D. Karanth, learned counsel for the applicant, is that compulsory or premature retirement is aimed at weeding out Government inefficient ~~or~~ employees or those whose integrity

is doubtful; that no adverse remarks in the Annual Confidential Reports (ACRs) were conveyed to his client so as to lead to the inference that his work was unsatisfactory;; that his client has still 5 years of service left for attaining ~~the~~ 58 years, the age of superannuation; that premature retirement at this stage of his career would render it difficult for him to secure alternative employment; that the order of premature ~~re~~ retirement is in the circumstances arbitrary and therefore liable to be set aside.

3. Shri M.S. Padmarajaiah, Senior Central Govt. Standing Counsel submits, that the order of premature retirement in the present case is not arbitrary; that ~~before expassing the~~ ~~order~~ a High Powered Committee (HPC) had scrutinised the service records of the applicant and in the light of the recommendations made by the HPC, the order retiring the applicant was passed. Shri Padmarajaiah maintains that the recommendations made by the HPC are not subject to judicial scrutiny. In support of this position reliance is placed by Shri Padmarajaiah on the decision in V.M.K. Menon V. Scientific Advisor (ILR 1985 - KAR 2071) in which Chandrakanta Raj Urs, j. held "The Departmental Promotion Committee has found him not suitable for recommendation to be promoted and this Court cannot substitute its opinion formed on the basis of the assertions made by the petitioner in this Court". According to Shri Padmarajaiah the observations made by the learned Judge in respect of the Departmental Promotion Committee ~~should~~ equally apply to the HPC in the present case.

4. In our opinion, ~~xxxxxx~~ any court would be reluctant to substitute its view for the view taken by a Committee but in cases such as the present, where the order of premature retirement is challenged on the ground that it was arbitrarily passed, this Tribunal is competent to peruse the proceedings of the HPC with a view to finding out whether the recommendation was made on valid grounds and whether there ^{was} is a reasonable nexus between the material on record and the order of premature retirement. Such a limited judicial review ~~xxxxxx~~ is justified as observed by ^{the Supreme Court} Krishnayya in Baldev Raj Chadha V. Union of India (AIR 1981 SC 70) as follows:

"When an order is challenged and its validity depends on its being supported by public interest justifying the State must disclose the material so that the Court may be satisfied that the order is not bad for want of any material whatever which to a reasonable man, reasonably instructed in the law, is sufficient to sustain the grounds of 'public interest' justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well-settled in administrative law and founded on constitutional obligations. The limitations on judicial power in this area are well known and we are confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest."

5. This takes us straight to the proceedings of the HPC dated 6-1-1986 which in so far as it is material to the applicant reads:

"As regards Shri Iqbal Shariff, S.I., the

HPC has taken due note of his unsatisfactory service and more so, the punishments issued under SDOT Memo No.Q.24/2/69 dated 23-11-82 on a case of floating lottery at Harihar in violation of Rule 12 of CCS(Conduct) Rules, 1964 in the name of financing the Union and punished by stoppage of next increment for six months without cumulative effect, and yet another punishment vide Memo No.Q.753/Disc./2 dated 29th November 82 by DET Devangere on charges involving moral turpitude and integrity. In the latter case, the official has been punished by reduction by two stages in the ~~increment~~ time scale of pay for a period of two years without the benefit of earning the lost increments. The official was also involved in a police case for which he was under suspension during 1970-71 and 1971-72. Taking an over all assessment of the official's record, the HPC considers that the said Shri Iqbal Shariff be retired in public interest."

The words 'unsatisfactory service' taken along with the instances mentioned by the HPC, leave the impression that the HPC considered the applicant to be of doubtful integrity but not ineffective or inefficient. This is borne out by the fact that Telecom District Engineer, ~~Shivam~~ Davangere offered on promotion the post of officiating LI, Chitradurga on 29-11-1985 but the applicant declined it at that time on personal grounds. In fact in paragraph 10 of the reply filed by the respondents to the application they have stated:

"In any case the applicant is not sought to be retired on grounds of inefficiency or ineffectiveness but for the reasons stated in the proceedings of the High Power Committee and on the grounds of moral turpitude and doubtful integrity."

6. What seems to have weighed with the HPC in considering that the applicant should be retired in public interest, as discernible from the ~~extracts~~^{extracted} of the proceedings of the HPC dated 6-1-1986 ~~concerned~~ in paragraph 5 supra, is the punishment issued under SD OT Memos dated 23-11-1982 and 29-11-1982. The charges having already been framed and the applicant having been punished in the departmental proceedings earlier held, we are at a loss to comprehend how on the basis of the same charges the HPC could advise ^{the} applicant be retired compulsorily in public interest. In other words, it would be a case of reviewing ~~existing~~ a punishment already inflicted on the applicant and varying the same to his disadvantage without hearing the applicant for which there is no provision in the rules. The position would have been different if the applicant was involved in charges similar to those which figured in the departmental proceedings held earlier in which case the HPC would have been justified in treating the applicant as a habitual offender and advising that the applicant be retired, without taking recourse to initiation of departmental proceedings, which is not the position here.

7. Nor was the HPC right in taking into account the fact that the applicant was placed under suspension during 1970-71 and 1971-72. The aforesaid suspension of the applicant was not done by the authorities as a measure of punishment but pending the termination

proceedings in
of/a criminal case in which the applicant was implicated. It appears that the applicant was acquitted by the criminal court of the charges levelled against him in 1972 and as a sequel thereto he was reinstated in the post he was then holding with full pay and allowances for the period of suspension. We are, therefore, of the view that the HPC misdirected itself in placing reliance on the order of suspension which ultimately lost its significance with the acquittal of the applicant in the criminal case.

8. Barring the three instances mentioned above the HPC has not relied on any adverse entries in the CR dossier or any material culled out of the personal files, if any, relating to the officer which have a bearing on the proposed premature retirement. We are, therefore, satisfied that the proceedings dated 6-1-1986 in which the HPC advised premature retirement of the applicant is arbitrary since it is not based on any material worth the name.

9. Reliance has been placed by the respondents in the reply filed on their behalf to the application that the applicant's salary was attached by an order of court in 1973 and again in 1975 pursuant to ^{instituted} execution proceedings/~~brought~~ by his creditors and this was not brought to the notice of the respondents as he was bound to do under the rules governing his service; that a false travelling allowance claim was

made by the applicant by producing a ~~lodger~~ receipt from a non-existent lodge at Mysore in 1985 and he incurred a debt of Rs. 561.05 by misusing his official position and purchasing paint from a firm for his personal use. These allegations appear to us to be much too tenuous to sustain the order of premature retirement passed against the applicant. In this connection, it is pertinent to note that the Department of Personnel and Training (DPT), in their letter No. 25013/30/85-Estt(A) dated 9th August, 1985, stated inter alia:-

" Para II(5)(a) of the O.M. dated 5th January, 1978 also lays down that premature retirement should not be used to retire a government servant on grounds of specific acts of misconduct, as a short-cut to initiating formal disciplinary proceeding. It is clarified that the intention is not that when an officer has reached a stage in service when review under F.R. 56(j) can be initiated and, at that time, a specific act of misconduct also comes to notice, action under F.R. 56(j) is not a cover for what is, in fact, a punishment sought to be imposed."

Had there been any material other than the three instances mentioned in the proceedings of the HPC for which the applicant had already been punished, dated 6.1.1986, these allegations could have been taken into account along with other facts and circumstances and an opinion formed on the basis thereof to retire the officer prematurely. In the instant case, however, no such adverse material is forthcoming, and therefore, the respondents were bound to substantiate their allegations by holding a departmental enquiry.

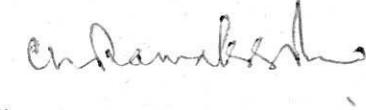
10. On a careful consideration of the rival contentions, we have no hesitation in holding that the impugned order of premature retirement is arbitrary and is accordingly set aside.

11. Before concluding, we consider it necessary to comment upon the method followed by the HPC in holding the proceedings. From the Minutes of the proceedings, it appears that on 6.1.1986, the HPC reviewed as many as 34 cases of staff attaining 55 years of age/30 years' qualifying service during the period from 1.1.1986 to 31.3.1986. It is only reasonable to expect the HPC to consider the case of each official separately, not only with reference to ACRs, but also the personal or other files relating to the officer and the assessment made by superiors who had an opportunity to watch the work and conduct of an officer, as stated in the letter of the DPT dated 9.8.1985. It is also stated in the aforesaid letter that an Internal Screening Committee for preparing a comprehensive brief on each officer should be set up in each Ministry/Department to assist the HPC. Only when the case of each officer is considered separately, it would be possible for the HPC to apply their mind to the relevant material, including the comprehensive brief, and arrive at a just conclusion whether the officer concerned should be retained or compulsorily retired from service. A common order passed by the HPC in respect of all the 34 officers, to the without referring separately/files in respect of each officer containing the relevant material and the decision

taken by the HPC in respect of that officer, as was done in the present case, leaves us in doubt whether the HPC had dealt with the entire material relating to each officer. We have dwelt on this aspect, since the order of compulsory retirement has ~~had~~ an adverse impact on the career of an officer and the proceedings of the HPC should not leave the impression ~~maxthexgarding~~ that the decision arrived at was arbitrary and capricious.

12. In the result, the application is allowed.


(L.H.A. Rego)
Member (AM)
8.9.1986.


(Ch. Ramakrishna Rao)
Member (JM)
8.9.1986.

cku/dms.