

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE 31ST DAY OF OCTOBER, 1986.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy. .. Vice-Chairman.

And

Hon'ble Mr. L.H.A. Rego. .. Member (A).

APPLICATION NUMBER 285 OF 1986.

G.N. Seshadri,
Aged about 51 years, Assistant Engineer,
Personnel, now working as Assistant
Personnel Officer (Construction), Southern
Railway, No. 18, Millers Road, Bangalore-560 046. .. Applicant.
(By Sri K. Sridhar, Advocate)

v.

1. The Union of India
represented by the Secretary to the
Government of India, Ministry of Railways,
Rail Bhavan, New Delhi-1.
2. The Secretary,
Railway Board, Rail Bhavan, New Delhi.
3. The General Manager (Constructions),
Southern Railway, No. 18, Millers Road,
Bangalore-560 046.
4. The General Manager,
Southern Railway, Park Town,
Madras-3. .. Respondents.

(By Sri K.R.D. Karanth, Advocate).

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This application coming on for hearing this day, Vice-Chairman made the following:

ORDER

In this transferred application received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act of 1985 ('the Act'), the applicant has challenged the order No.E(O)I-79/SR-10/22 dated 16-4-1980 (Annexure-G) of the Railway Board, New Delhi (Board) and letter No.BNCZ/IV/I dated 10-6-1980 of the General Manager, CN, Bangalore (Annexure-J).

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2. The applicant, who is a graduate in Engineering joined the Indian Railways as an Assistant Inspector of Works (AIW). He was promoted as an Assistant Engineer (AE) in 1958 from which time he was working in that capacity at different places.

3. While the applicant was working as an AE at Miraj he was prosecuted in the Court of the Sub-Judge, Sangli for an offence under Section 5 of the Prevention of Corruption Act of 1947 who on 30-4-1973 convicted him of that offence. In Criminal Appeal No. 584 of 1973 the applicant challenged the said conviction before the High Court of Judicature, Bombay which by its judgment dated 11/12-9-1975 allowed the same and acquitted him.

4. On the termination of those proceedings before the High Court of Bombay, the applicant who was kept under sus-pension was reinstated to service on 24-11-1975. After such reinstatement also, more than one disciplinary proceeding was initiated against the applicant under the Railway Servant's Discipline and Appeal Rules, 1968. While those proceedings were pending at several stages, the applicant completed the age of 50 years on 13-5-1979.

5. On the applicant completing 50 years of age, the Board as the competent authority under Rule 2046 of the Indian Railway Establishment Code, correspondent Rule 56(J) of the Fundamental Rules examined his service records and took a decision to retire him from service on issuing him three months' notice in lieu of payment of salary. In conformity with that decision, the Board made an order on 16-4-1980 (Annexure-G) and issued the same to the applicant as required by that rule. On receipt of the same, the applicant made repre-

sentations

representations to the Board to re-examine his case, which has not found favour with it and the same has been communicated by the General Manager on 10-6-1980 (Annexure-J). On 11-7-1980 the applicant approached the High Court in Writ Petition No.9515 of 1980 challenging them with a prayer for stay. While issuing rule nisi the High Court declined to grant stay and, therefore the applicant has retired from service on the expiry of the period stipulated in the order of the Board.

6. The applicant has urged that he had an excellent record of service throughout his career and the Board had based its decision on irrelevant considerations and material which were not germane to Rule 2046 of the Rules. Secondly, he has urged that the authorities without proceeding with the disciplinary proceedings to their logical conclusions, as they were bound to where he could have proved his innocence, have made a short trip of them and have vindictively retired him from service exercising the extraordinary power conferred by Rule 2046 of the Rules and such an exercise of power was impermissible and illegal.

7. In their statement of objections, the respondents have asserted that the Board had considered the case of the applicant with due regard to the requirements of Rule 2046 and had taken a decision to retire him in the public interest only on relevant considerations and material. The respondents have urged that this Tribunal cannot review the decision of the Board as if it is an appeal and reach a different conclusion to the one reached by the Board.

8. Sri K.Sridhar, learned counsel for the applicant contends that his client had an excellent record of service exemplified in award of medals and a 'Parchment Commission' issued by the President of India and the decision of the Board was not based on relevant circumstances and materials germane to Rule 2046 of the Rules. In support of his contention Sri Sridhar strongly relies on the rulings of the Supreme Court in BALDEV RAJ CHADHA v. UNION OF INDIA AND OTHERS (AIR 1981 Supreme Court 70)

9. Sri K.R.D.Karant, learned counsel appearing for the respondents contends that the decision of the Board based on relevant considerations and material was for purposes of Rule 2046 of the Rules and the same cannot be examined by this Tribunal as if it is an appeal and a different conclusion reached on that decision. In support of his contention Sri Karant strongly relies on the rulings of the Supreme Court in AIR 1965 Supreme Court 280 and AIR 1972 Supreme Court 2185.

10. In its order made on 16-4-1986, the Board had stated that the retirement of the applicant was necessary in the public interest. The applicant does not dispute that on that day, his qualifying service empowered the Board under Rule 2046 of the Rules to examine ^{and} ~~the~~ decide his case for retention or for retirement in the public interest. When a responsible authority like the Railway Board states that the continuance of the applicant was not in the public interest, this Tribunal should normally accept that statement made in its order and reiterated in the statement of objections also.

11. But, in order to satisfy ourselves whether the decision
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the Board was on conformity with Rule 2046 of the Rules or not, we requested Sri Karanth to make available the notes and minutes of the Railway Board and the service records of the applicant for our examination. Sri Karanth in our opinion very rightly produced all of them for our perusal. We have carefully examined all of them.

12. We find from the records that the Board had genuinely applied its mind to the requirements of Rule 2046 of the Rules and had based its decision only on relevant circumstances and material germane to that Rule.

13. When once we hold that the Board which was competent to decide had taken into consideration the requirement of Rule 2046 and had based its decision on relevant circumstances and material, this Tribunal cannot examine its decision as if it is a Court of appeal and come to a different conclusion on such a decision at all. Every one of the rulings relied on by both sides only lay down this principle. From this it follows that we have necessarily to uphold the decision of the Railway Board.

14. When once we hold that the decision of the Railway Board was germane to Rule 2046 and was based on relevant considerations and material and the same cannot be examined by us as a Court of appeal, it necessarily follows from the same that we cannot examine the aptness of that decision with reference to each one of the factors or material on which every elaborate arguments were addressed by Sri Sridhar. We therefore, decline to notice and examine every one of them.

15. Sri Sridhar next contends that the Board could not have exercised its power under Rule 2046 before the culmination of the disciplinary proceedings pending against the applicant.

16. When the applicant had become eligible for consideration under Rule 2046 of the Rules, the fact that one or more disciplinary proceedings were pending against him, did not bar the Board to consider his case for retirement under that Rule. If that is so, the Board was competent to exercise its power under Rule 2046 of the Rules. We see no merit in this contention of Sri Sridhar and reject the same.

17. As all the contentions urged for the applicant fail, this application is liable to be dismissed. We, therefore, dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.

[Signature]
VICE-CHAIRMAN 21/10/86

[Signature]
MEMBER(A) 21-10-1986