

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 25 AUG 1988

APPLICATION NO.

86

/ 88(F)

W.P. NO.

Applicant(s)

Shri M.S. Mathad

To

1. Shri M.S. Mathad
S/o Shri Shankaraiah Mathad
Housing Colony
Medleri Road
Ranabennur (Dharwad District)

2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050

3. The Director of Postal Services
North Karnataka Region
Dharwad - 580 001

Respondent(s)

V/s The Director of Postal Services, NK Region,
Dharwad & 2 Ors

4. The Superintendent of Post Offices
Haveri Division
Haveri - 581 110
Dharwad District
5. The Director General (Posts)
New Delhi - 110 001
6. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAN/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 19-8-88.

Agreed
K. M. Mathad
26-8-88

QC

Parashuram Shinde
DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE 19TH DAY OF AUGUST 1988

Present: Hon'ble Shri Justice K.S.Puttaswamy Vice Chairman
Hon'ble Shri P.Srinivasan Member(A)

APPLICATION NO. 86/1988

Sri M.S.Mathad,
S/O Sri Shankaraiah Mathad,
Housing Colony,
Medleri Road,
Ranibennur.

... Applicant

(Shri M.R. Achar, Advocate)

vs

1. Director of Postal Service,
N.K. Region, DHARWAD.
2. Sri Y.C.Dixit,
Superintendent of Post Offices,
Haveri Division, Haveri.
3. Director General (Posts),
New Delhi. ...

Respondents

(Shri M.S.Padmarajaiah, Advocate)

This application having come up for hearing
before this Tribunal, Hon'ble Shri P. Srinivasan,
Member (A), made the following:

ORDER.

The applicant, who was working as Assistant Postmaster, Ranibennur Head Office, was retired from service under F.R.56(j) by order dated 20-10-1987 passed by the Director of Postal Services, Dharwad. This order was followed by corrigendum dated 21-10-1987 in which a small mistake was corrected without affecting the decision already conveyed in the order of 20-10-1987.

The applicant challenges the order dated 20-10-1987 by which he was retired from service.



P. Srinivasan

2. Shri M.R. Achar, learned counsel for the applicant, submitted that the order passed by the competent authority retiring the applicant from service under F.R.55(j) was mala fide and was not based on any material. The relations between the applicant and his immediate superior Shri Y.C. Dixit, Superintendent of Post Offices, Haveri, were strained during the year 1986-87. The applicant was working in the Savings Bank and National Savings Certificates branch where the workload was too heavy and he did not have adequate staff support to deal with the workload. Shri Dixit had insisted that he should clear the workload in spite of shortage of staff. The applicant made repeated requests for additional hands to deal with the workload but Shri Dixit turned a deaf ear to all such requests and insisted on prompt disposal of work. The matter was, therefore, taken up at a higher level as a result of which a committee consisting of the Director of Postal Services, two senior officers and two members of the staff side, was appointed to go into the matter. The committee visited Haveri and came to the conclusion that the grievances of the staff side were justified. The Committee recommended, inter alia, posting of additional staff to the SB branch till arrears were cleared. This angered Shri Dixit, as the applicant's position had been vindicated by the higher authorities. Shri Dixit, therefore, started disciplinary proceedings against the applicant on several minor grounds and made adverse entries in his confidential report. As a result of these disciplinary proceedings and adverse entries, the Review Committee which met to consider continuance



P. D. K. —

of officials in service beyond the age of 55 recommended that the applicant be retired from service and as a result, the impugned order was passed. There was no other material before the Review Committee to come to the opinion that it was in the public interest to retire the applicant. The character roll of the applicant was blemishless until Shri Dixit came into the picture. Therefor~~s~~, since the Committee considered the adverse remarks made by Shri Dixit, which were motivated by malice, the impugned order should be struck down as arbitrary and based on irrelevant material. At this point, the character roll of the applicant which was produced by the respondents was perused by us. We noticed that the applicant had been rated as only average for many years even prior to the alleged rupture of relations between the applicant and Shri Dixit. Shri Achar submitted that when a Government servant is rated as average in the confidential report, it does not constitute an adverse remark. After all, the applicant was holding a small post of Assistant Postmaster and most persons in his category would be only average, but excepting the applicant, the others who were ~~attaining~~ about to attain the age of 55 were not recommended for retirement by the Committee.

A person can be called ineffective and not fit for continuance in service only if there are adverse remarks in his character roll. Nobody had doubted the integrity of the applicant and in this background, the average rating given in his confidential report should not have formed the basis for retiring him from service. Therefore, the recommendation of the Committee to retire the applicant was not based on relevant material. Viewed

P. D. 18c



in this light, the action of the Review Committee and the disciplinary authority in deciding to retire the applicant particularly when the appeals made by him against penalties imposed on him were still pending was bad in law.

3. Shri M.S.Padmarajaiah, learned counsel for the respondents, submitted that it was not merely the entries in the character roll made in 1986⁸⁶ and ~~87~~⁸⁷ that were considered by the Review Committee. The Review Committee considered the cases of all officials who were due to cross the age of 55 and examined the entire character roll of each such official and after doing so, came to the conclusion that it was^{not} in the public interest to continue the applicant in service beyond the age of 55. Retiring a person under F.R.56(j) is not a penalty and does not visit civil consequences on the official who is so retired. Shri Padmarajaiah, therefore, submitted that since the decision to retire the applicant was based on the character roll of the applicant, not merely in the last year, but in earlier years also, the challenge to the impugned order on the ground of mala fides was not material and has to be rejected. Over a long period, the character roll of the applicant was merely average and the Committee felt that a person with average ability should not be continued in service in the public interest. It was not for this Tribunal to go into the sufficiency or the material or to substitute its own judgement for the judgement of the Review Committee or the competent authority. Shri Padmarajaiah, therefore, submitted that this application should be dismissed.



P. S. b

4. We have considered the rival contentions carefully. It is now settled law laid down in a catena of decisions of the Supreme Court that retiring a Government servant under F.R.56(j) does not constitute penalty and, therefore, does not attract the provisions of Article 311 of the Constitution or the principles of natural justice. Since action under F.R.56(j) is based on the opinion of the competent authority that the continuance of the official concerned in service is not in the public interest, and is, therefore, a discretionary power conferred on the competent authority, the scope for interference by this Tribunal is somewhat limited. If there is any material and that material is relevant for considering whether it is ^{of} ~~in~~ the public interest to continue the service of a Government servant, this Tribunal will not go into the sufficiency of the material and substitute its own opinion for that of the competent authority. Turning to the facts of this case, we find on a perusal of the character roll of the applicant that even before the souring of his relations with Shri Dixit which happened during the year 1986-87, he was ~~only~~ rated as an average worker in many confidential reports. In 1984, he was censured by way of punishment for negligence. We may straightaway notice that there is nothing ^{of} ~~in~~ record against the integrity of the applicant and his retirement appears to have been ordered only on the ground that he was ineffective or was just not good enough. It is possible that even on the basis of the record of the applicant in which he has been rated as average for a number of years, and in spite of the minor punishment



imposed on him in 1984, a view ~~can~~ be taken that he was not unfit for continuance. As we have already indicated, it is not for us to substitute our opinion for that of the authorities below. We do not agree with Shri Achar that unless adverse remarks are found in the character roll, a person cannot be retired under F.R.56(j). As pointed out by the Supreme Court in J.N.Sinha's case, many considerations may weigh with the appropriate authority while exercising the power conferred under the rule. A view may be taken that a person with average ability should not continue in service because there are others better than him whom the Government may prefer to continue in service. We cannot say that the average rating given to the applicant in character roll and the punishment given to him in 1984, even ^{if} one were to disregard the adverse remarks in 1986-87, did not constitute relevant material for coming to the decision which the competent authority did. Since it is not for us to assess the material afresh and to come to a different conclusion, we have no choice but to dismiss this application. After all, what we have to see is whether the competent authority honestly considered and assessed the material before it ^{if} and whether the material was relevant for the purpose. We are satisfied that the authority did consider the material which was relevant and formed the opinion that it was in the public interest to retire the applicant and that is the end of the matter.

7. 11-89



5. In view of what we have stated above, the application is dismissed, but in the circumstances of the case, parties to bear their own costs.

Sd/-

(K.S.PUTTASWAMY) 12/12/78
VICE CHAIRMAN

Sd/-

(P.SRINIVASAN)
MEMBER(A)

TRUE COPY



P.V. Venkateshwaran
DEPUTY REGISTRAR (JULY 25/78)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE