

(15)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

[REDACTED]
[REDACTED] BOMBAY BENCH

O.A. No. 81/90
T.A. No.

198

DATE OF DECISION

5.2.1992

Dr. R. S. Chandhoke Petitioner

Shri S. R. Atre Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri M. I. Seltuna Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U.C. Srivastava; V/C

The Hon'ble Mr. M.Y. Prabhu, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000

(U.C. Srivastava)
V/C

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL BOMBAY BENCH
Registration O.A.No. 81 of 1990

Dr. Rajinder Singh Chandhoke Applicant
Vs.
Union of India & Others Respondents

Hon'ble Mr. Justice U.C.Srivastava, V.C.
Hon'ble Mr. M.Y. Priolker, Member (A)

Oct-5-2-72

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

Against the order of compulsory retirement dated 12.1.90 after completion of 50 years of service on 5.3.89 under clause (H) of Article 49 of the Civil Service Regulations, the applicant who was Scientist 'E' in the college of Military Engineering at Pune has approached this Tribunal.

2. The applicant after attaining the various qualifications was appointed as Chargeman Grade II in the Defence Research & Development Organisation, Electronics & Development Establishments at Bangalore on 16.11.61 on purely provisional basis. In the meantime the applicant successfully completed the Research Fellowship and he was offered a temporary post of Senior Scientific Officer Grade II. He was appointed initially on probation and thereafter he was adjudged fit to be promoted to the post of Senior Scientific Officer Grade-I and was accordingly promoted to the said post vide an order dated 19.1.68. Thereafter after having been found fit he was promoted in an officiating capacity to the grade of Principle Scientific Officer w.e.f. 12.6.75. Again after assessment vide an order dated 18.3.82 he was promoted to the grade of Scientist 'E' and was posted at Vehicle Research & Development Establishment at Ahmednagar. Again his case was reviewed and he was promoted to the post of Scientist 'E' w.e.f. 1.7.80. The next promotion post in the promotional channel is the grade of Scientist 'F' and the applicant was found eligible for assessment for the said post and as per allegation he was found eligible for the

said post and was called twice for the said purpose before the Assessment Board. The applicant has leveled certain allegations and stated that because he was Sikh and as such he was discriminated and that was in the year 1986 he was transferred to punishment and this was by way of punishment because of some personal differences between him and the Brigadier R.N.Mehrotra, Director, Vehicle Research Development Establishment, Though ultimately he was transferred to Pune and because of the bad treatment which was given to him by R.N.Mehrotra he was taken ill. The applicant met personally Dr. V.Arunachalam, Scientific Advisor to the Ministry of Defence and requested him for a posting at Pune. The applicant request was accepted and ultimately he was posted to the College of Military Engineering Pune on June, 1987. According to the applicant issue regarding the purchase of "brakelining friction testing machine" was taken up by the said Brigadier in the year 1987 and by a letter dated 8.1.87 the applicant was asked to explain. The applicant gave proper explanation to the query made by the Brigadier R.N.Mehrotra. In the meantime the applicant was retired prematurely. The applicant had challenged the compulsory retirement on the ground that it is arbitrary and having been passed without any material on the record, and that he may not have been prematurely retired as per the office memo dated 24.12.85. The President decided that the Scientific and Technical Personal (Gazetted of the Defence Research and Development Service in the Grade of Scientist 'E' and above shall retire at the age of 60 years and it was also stated that the appointing authority shall have the absolute right to retire any Scientific & and Technical Personal by giving him notice not less than 3 months or 3 months pay and allowances in view of such notice. According to the applicant he cannot

be prematurely retired under rule 459(h) of the Central Service Rules.

3. The respondents have challenged the plea raised by the applicant and have pleaded that the decision was taken to retire him from Dr. V.S. Arunachalan, Secretary to the Government of India, Department of Defence Research & Development who exceeded to the applicant and also scrutinised the matter. The respondents have denied the allegations of the applicant on malafide and pointed out that on his representation the Secretary of the Department accepted his position and the same officer against whom he had made allegation in the application also accepted his request and granted his prayer.

4. On behalf of the applicant it was contended that in view of the President's notifications by which the age was extended to 60 years, the provisions of 459 of the Civil Service Regulations were not applicable. The said O.M. dated 24th December, 1985 which enhances the age of retirement from 58 years to 60 years and as such provision of compulsory retirement under Article 459 which takes the age of retirement as 58 years were not applicable.

5. On behalf of the respondents it was contended that the normal age of retirement enhanced by the said Office Memorandum by Article 459 (6) of the CSR and the said office Memorandum has not superseded Article 459 of the CSR but has been issued in addition to the provisions of CSR as evident from para(1) of the said Office Memo. and the said Office Memorandum is merely an executive order and cannot supersede Statutory Rules/Regulations. It in fact has been issued in terms of Article 459(e) CSR and cannot exist and govern the age of retirement unless the applicant is governed by CSR rules including Article 459.

thereof. Since the O.M. dated 24.12.85 enhancing the age of retirement from 58 years to 60 years the provisions contained in the said O.M. become effective after a number of DRDS Service attained the age of 58 years and not earlier than that and these orders contained only transitory provisions to meet the shortage of Scientist to be reviewed after 5 years from the date of issued i.e. 24.12.90. Article 459(b) of Civil Services Rule reads as under:

"A Government servant to whom clause(a) applies may be granted extension of service after he attains the age of 58 years with the sanction of the appropriate authority, if such extension is in public interest and the grounds, therefore, are recorded in writing provided that no extension under this clause shall be granted beyond the age of 60 years except in very special circumstances."

Obviously this is an Statutory Regulations and the Statutory Regulation cannot be amended by an executive order.

Undoubtedly it appears that, in order to attract the Talented Scientist this O.M. was issued and the government took power in it to retire a particular employee at a age of 60 years. But even if it could be said which at the most can be read along with Article 459 cannot be tracked and take away the powers of the Govt. to retire an employee under Article 459 of the CSR which prescribed the same.

In this behalf it is not amended even if the age of retirement is taken to be 60 years Article 459 will continue to govern all such employees, and accordingly this contention failed.

6. On behalf of the applicant it was also contended that review could have taken place before the age of 50 years and in this case it has taken beyond the age of 50 years. and in this connection reference has made to the provisions of Article 459(h) which provides that the appropriate

authority has absolute right to retire any government servant by giving him the notice of not less than 3 months in writing or three months pay and allowances in lieu of such notice after the Government servant has attained the age of 50 years/55 years as the case may be. In the instant case the notice was given to the applicant after he had attained the age of 50 years. Even otherwise the said provisions are directly and even if there is some technical flaw in giving a notice either before or after 50 years or after 55 years, the same cannot take away the powers which vest in the Government to exercise the same in public interest. It was then contended on behalf of the applicant that the order suffers from the vice of malafide.

7. We have made reference to the pleadings of the parties and no clear allegation of malafide has been raised, and the applicant has not been able to collect nor the Review Committee or the Secretary of the Department or even the Prime Minister to look into the foul and approved the same did so because of the certain reasons. Attempt has been made by the applicant to make allegations of malafide against the Brigadier R.M.Mehrotra. Although he had not succeeded in proving the same in view of the denial or missing of the connected link, but the said Brigadier R.N.Mehrotra was not the authority which passed the order of retirement. The plea of malafide which has not been established in behalf of the case fails. The main thrust of attack on the applicant was that the order was arbitrary and there was no material on the record and there was no communication to the applicant so far as integrity is concerned and as such without giving an opportunity to the applicant in the matter regarding integrity, and he had no opportunity to meet the order of retirement, which is legally bad. From the pleadings of the respondents it appears that the Review Committee, ^{considered} the ACR for the last five years only and

thereafter taking into consideration the overall assessment it came to the conclusion that the service of the applicant is to be retired. Thereafter the matter went before the Joint Secretary and then before the Secretary of the Department who also agreed with the same and the ultimate concurrence was given by the Prime Minister. The extracts of the ACRs from the last five years are as follows:

1983 "Some projects were delayed".

His application to obtain necessary data and inputs is average. His supervision and control of his juniors and promptness is average."

"Application to work is average."

1984

"Project 2 has not progressed satisfactorily".

His organisational commitment is low average and professional achievements and performance are just satisfactory. He has average design ability".

"Controlling ability is low average".

Integrity: "specifically nothing adverse has come to notice".

"Yes (the officer was warned/reprimanded) for not exercising adequate care and caution in following instructions while placing an order on a private agency".

His professional and organisational commitment is low average. The group he heads has therefore produced results which meet minimum requirements.

1985

"His commitment is low average and so his performance is low average.

"Average in his efforts to supervise and control the productivity of his group is average."

Integrity: "Low average. A case of his accepting hospitality from a company to an extent beyond acceptable norms has come to notice".

"He was reprimanded for interfering in the process of selection of contractors for MES work without authority".

"His application is low average and performance is low average. Low average in personal qualities."

1986 (1.1.86 to 14.8.86)

"Development of multi wheeled high mobility class was a major project in which much progress was not achieved by him."

"His theoretical activity is average."

"However his professional commitment is low average and so results are average, particularly ability to control juniors".

"Reprimanded for making wrong allegations about other officers."

"A (discipline/vigilance) case involving stay in a hotel is pending".

"But his professional involvement and organisation

commitment are low average and so his performance is average (15.8.86 to 31.12.86)

"The quality of output of the officer has been just average".

"The officer has s own average(directing) capability."

The officer has demonstrated average initiative and planning ability."

"Decision making ability: Average".

"Inter-personal relations: "Average".

Integrity: Separate not added(doubtful)

"The officer was posted to VRDE Cell Jabalpur w.e.f. 15March 1986 but has not worked even one third of the duration. Has been taking leave for one reason or the other".

1987 1.1.87 to 15.6.87

"Inspite of his qualifications and experience the quality of output was just average".

"The officer has just satisfactory knowledge to carry out routine jobs."

"The officers possesses average directing capabilities."

"The officer exhibited average management qualities."

"In past, many equipments were repurchased by the officer without giving serious thought to their end use, resulting in number of equipments lying idle. When asked to explain the officer had no satisfactory explanations."

"The officer has just average initiative and planning abilities."

"Decision making ability-average."

Integrity: Separate note added.

(A case relating to TA/DA claims of the officer is being investigated.)

Also, a case relating to false HRA claim and giving false declaration is being investigated by Directorate of Vigilance and P & M)

"In my considered opinion, the officer has reached his limit".

"A poor performer. I would grade him poor".

It is thereafter the order of retirement of the applicant being passed and in view of the facts as stated above it cannot be said to be in public interest. On behalf of the applicant reference was made to the case of A.K.Ghatak Vs. Union of India, 1990 Administrative Tribunal Cases page 423

In which various other cases have been considered and in the said case it was held that the unverified reports about the employee's doubtful integrity are not to be considered unless the employee is given opportunity of representation and such report cannot be on the basis of compulsory retirement. In the said case

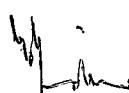
the recommendation was based on the specific cases of Income-Tax held by the applicant as the material placed before the committee was preferred as ex parte and did not reflect any clarification or declaration of the applicant and was complete disregard of the CSR and other Service records of the applicant which does not contained anything adverse. The facts in the said case is quite different. in the case of the applicant there were no such specific all the relevant instances and/entries in CSR were present. Similarly a reference was made to the case of V.K.Jairam Vs. Union of India and others 1990, 14 Administrative Tribunal Cases page 425. In the said case the report contained instances of doubtful integrity which forms specific acts of misconduct. It was held that for reason regarding compulsory retirement, the said disciplinary action should have been recorded and in the absence of any reason retirement order was held bad. Obviously in that case also there were specific instances. Same the position in another case in which also the earlier case of A.K.Saxena was considered. As a matter of fact the instant case is the case of overall assessment and the employer has a right to consider the overall assessment which was done by the Review Committee. In the case of Union of India Vs. M.E.Reddy and others 1990,AIR SC 563. In which the Supreme Court observed that " it will indeed be difficult and impossible to prove by casting evidence that a particular officer is dishonest, but those who had earned the opportunity to watch the performance of the said officer in close quarters or in a position to know the nature and character not only performance but also the reputation that he enjoys. Similarly in the case of R.L.Bhutal Vs. Union of India & Others,1971(2) page 5c SCR. It was held that, " It may that inspite of the applicant is not been satisfactory they should consider the other relevant factors such as history of the applicant for the entire

service and confidential report throughout the period of service upon which the appropriate authority may still decide the order or retirement under fundamental rule.

56. In this case it may be noted that provisions of fundamental rules 459 is paralleled with fundamental rules 56(J). It is true that in the case of Brij Bihari Lal Vs. High Court of Madhya Pradesh AIR 1981 SC 594, the Supreme Court held that the adverse remarks not having been communicated, the same cannot be taken into account on the part of total service record considered by the Review Committee. But here in this case the same position will not arise as has been explained above and in this connection again the observation made in R.L. Butal's case (Supra) may be made. The contention therefore that the adverse remarks did not contain specific instances and therefore contrary rules cannot be sustained cannot be accepted. Equally unsustained is the contention that because of this omission the applicant could not make an adequate representation and therefore the confidential remarks are vitiated.

8. On behalf of the respondents reference has been made to the case of Jayanti Kumar Sinha Vs. Union of India & Ors., AIR 1989 SC 72, which was also a case of an employee who was of the department in question itself and there was much common in the case of both these persons. The Court after considering the remarks observed, "The entries which were extracted mostly based upon general assessment of the performance as already pointed out he was communicated years back the general disapproval indicated and we are satisfied with the review proceedings were in consonance with the guidelines framed by the

Government. The post on which the applicant was working was responsible one and his performance could not be tolerated. In Shyam Lal vs. State of U.P. & Union of India 1955(1) SCR page 26 the constitution bill had indicated that the compulsory retirement did not involve any misbehaviour and it cannot be said that the power of compulsory retirement and the procedure prescribed for taking such action have been approved by the court unnecessary referred to those case. The court from the proceedings that the committee took a review of 19 officers and they were informed and were found liable for the retirement. The records of the proceedings indicate that even though after the recommendation of the government they were scrutinised by the review committee." The same is the position in the instant case. It is a case of the general assessment and after the general assessment the review committee came to a particular conclusion. The conclusion of the review committee was scrutinised at various levels, and as such it cannot be said that the order is arbitrary, not based on any material or ^{was} not in the public interest or is based on such material which ought to have been communicated and an opportunity to explain should have been given. As such we do not find any merit in the case and the application deserves to be dismissed. It is accordingly dismissed. No order as to costs.


(M.Y. Prabhu)
Member(A)


(U.C. Srivastava)
Vice-Chairman


5/2/92