

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

(4)

Original Application No.93/91.

Shri R.K.Hanḁa.

... Applicant.

V/s.

The General Manager,
Western Railway,
Churchgate, Bombay & Another.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri U.C.Srivastava,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Applicant by Shri G.S.Walia.
Respondents by Shri A.L.Kasturey.

Oral Judgment:-

{Per Shri U.C.Srivastava, Vice-Chairman} Dated: 15.7.1991

The applicant who in the normal course would have attained the age of superannuation on 1.1.1998 was appointed to Railway service as Assistant Medical Officer in the month of February, 1969 after selection through the U.P.S.C. At the relevant point of time the applicant was working as Additional Divisional Medical Officer in the Western Railway Health Unit at Bombay Central. A Departmental Proceeding started against the applicant in the year 1985 and after its completion without declaration of its result the applicant was transferred out of Bombay against which he filed an application before This Tribunal and his transfer in the circumstances was stayed. By order dt. 29.11.1990 served on him on 10th December, 1990 the applicant was sought to be retired compulsorily under Rule 1802 (a) of the Indian Railway Establishment Code. The applicant learnt that there were some discrepancies regarding the Disciplinary Proceedings and non-confirmity with Railway Board's order dt. 15.11.1979 and he has approached this Tribunal saying that there is no public interest involved and the order of retirement is arbitrary

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and discriminatory and no requisite opinion was formed as the competent authority passed orders based on irrelevant and extraneous material and that he has been singled out for hostile discrimination violating Articles 14, 16 and 21 of the Constitution of India and for the last 5 years there is no adverse entry in his record and as such there could have been no reasonable ground to come to the conclusion that the applicant should be retired prematurely.

2. The respondents in their reply have stated that there was material before the competent authority to retire the applicant prematurely. The applicant was prematurely retired on the basis of the recommendations made by the Review Committee. It has been stated that action against him in the disciplinary cases is independent and his premature retirement order is not related to the specific charges against him in the pending disciplinary case. His retirement is based on his total service record and on the basis of earlier three proceedings in 1971, 1972 and 1984 which had already been finalised and in two of them minor penalty and in one major penalty was imposed as the applicant has been proved guilty beyond doubt after conducting inquiry. In the last one i.e. of 1984 he has been imposed penalty of reduction to a stage in the scale of Rs.2,200-4,000 for a period of 3 years with cumulative effect and in another disciplinary proceedings the inquiry report has not been received as yet.

3. The learned counsel for the respondents was directed to produce the relevant records. The same has been produced before us and we have gone through the record. From the record it appears that so far as the work is concerned the Review Committee found his work was quite satisfactory inasmuch as he earned 14 points for his last 5 Confidential Reports, but as regards review of his

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integrity reference was made to his vigilance entry. A reference has been made to a case of 1971 when certain lapse was brought to his notice. In 1972 a notional recovery of Rs.25/- and recorded warning was issued to him in a case relating to misappropriation of sale proceeds of souvenirs and in a case registered in 1984 major penalty of reduction by five stages was imposed on him in 1987 for misuse of privilege pass. It has to be noted that this punishment was given as the applicant has taken along with other family members his mother as a family nurse, as he was entitled to take a family nurse and this is how he misused the privilege pass on which he was required to pay the entire fare and later on was penalised. A reference has also been made to the C.B.I. case of 1987 and major penalty proceedings are in progress against him on the charge of indulging in private business which was also considered before compulsorily retiring him. There was also an adverse entry in his C.R. to the effect that:

"He is not interested in job and does not treat the patients with the thoroughness that is required to generate confidence in them. There are complaints of neglect and/sloppiness. He has out-lived utility."

The applicant's representation against premature retirement was rejected. On behalf of the applicant it was contended that this adverse entry was taken into account for retiring him compulsorily and that the entry was not communicated to him and he was not given an opportunity to make a representation against the same. The record only indicates that there was a direction to the learned counsel for the applicant who drew our attention to the instructions issued by the Ministry of Railway letter No.ED & A/65/RG/6-47 dated 24.11.1965 regarding the procedure to be followed for filling up the item relating to integrity:

"1) If the Officer's integrity is beyond doubt, it may be so stated.

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- ii) If there is any doubt or suspicion, the item should be left blank & action taken as under:
 - a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report to the next superior officer who will ensure that the follow up action is taken. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he has not watched the Officer's work for sufficient time to form a definite judgement or that he has heard nothing against the officer, as the case may be.
 - b) If, as a result of the follow up action, the doubts or suspicion are cleared, the officer's integrity should be certified and an entry made accordingly in the Confidential Report.
 - c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.
 - d) If as a result of the follow up action, the doubts or suspicions are neither cleared nor confirmed, the Officer's conduct should be watched for a further period and thereafter action taken as indicated at (b) and (c) above."

On the basis of the instructions the learned counsel for the applicant contended that it was incumbent on the respondents to convey, as such unconveyed entry has been taken into account for retiring the applicant compulsorily and that retirement order is not based on any relevant consideration and material and even based on uncommunicated adverse entry which could not have been taken into account and retirement order based on uncommunicated entry will be illegal and void.

4. On behalf of the respondents it was contended that it was a case of doubtful integrity and that it was not necessary to communicate all such material to the applicant and that order of retirement could have been passed after taking into consideration the overall picture and in this connection a reference was made to the case of R.L. Butail v. Union of India and Another A.I.R. 1971 SCR vol. 2 page 55 in which it was held:

"it may well be that inspite of work of the appellant being satisfactory, as he claimed it was, there may have been other relevant factors, such as the history of the appellant's entire service and Confidential Reports throughout the period of the service, upon which the appropriate authority may still decide to order appellant's retirement under F.R. 56 (J)".

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5. The learned counsel for the respondents made a reference to the case of M.E.Reddy and another v. Union of India (A.I.R. 1980 - S.C. - 563) in which it was held that:

"The confidential reports can certainly be considered by the appointing authority in passing the order of retirement under Rule.16(3) even if they are not communicated to the Officer concerned. The decision of the Review Committee is not binding on the Government of India. All that is necessary is that the Government of India should, before passing an order under R.16(3) consider the report of the Review Committee which is based on full and complete analysis of the history of the service of the employee concerned."

It was further observed that during the long years of his service that he puts in has to be considered from the point of achieving higher standard of efficiency and dedication so as to be retained.

6. The case of M.E. Reddy (supra) was considered in the case of Brij Behari Lal v. High Court of M.P. (A.I.R. 1981 - S.C. - 594) the Court found that certain adverse remarks were not communicated, held the order under F.R. 56(j) is invalid. In Brij Behari Lal's case the Court also considered the case of Gurdial S-ingh Fijji v. State of Punjab, A.I.R. 1979 SC 1622 in which it is necessary to communicate adverse entries made in confidential reports to the Government servant concerned have been considered. In M.E.Reddy's case the Court observed after considering this case that what we would like to add is that when considering the question of compulsory retirement, while it is no doubt desirable to make an overall assessment of the Government servant's record, more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration.


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7. In the case ^{of} H.C. Gargi v. State of Haryana 1986 S.C. (L&S) 738 during the pendency of the representation against the adverse entries order of compulsory retirement passed and the representation was rejected thereafter. It was held that the applicant was on the verge of retirement and ~~his retirement~~ order of compulsory retirement was passed on the basis of two adverse entries doubting his integrity and the adverse entry did not pertain to integrity, the order of compulsory retirement was held to be passed on no material. In the case of Baidyanath Mahapatra v. State of Orissa ^{u A.R. 1984 Se 2218 u} it was held that uncommunicated adverse entry cannot be taken into account to retire an employee and that if representation is pending the entries without consideration of representation can-not be linked with.

8. Thus in the instant case a very old entry and uncommunicated adverse entry was taken into account for retiring the applicant compulsorily. There was thus obviously no relevant material for coming to the conclusion that public interest require the same and there was no material on the basis of which the opinion could be formed. The order on the face of it obviously is manifestly illegal and ~~there~~ cannot be sustained.

8. In the result the application is allowed. The impugned order dt. 29.11.1990 is quashed and set aside. There will be no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(U.C. SRIVASTAVA)
VICE-CHAIRMAN