

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 829/1992

Transfer Application No.

Date of Decision 22.4.96

B.R.Patil

Petitioner/s

-

Advocate for
the Petitioners

Versus

T.N.Vijh, Jt. Secretary(E),

Respondent/s

Railway Board, Rail Bhavan,
New Delhi.

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member(J),

Hon'ble Shri. M.R.Kolhatkar, Member(A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(B.S.HEGDE)
MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.829/1992.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

22nd this day of April 1996.

B.R.Patil.

... Applicant.

 V/s.

T.N.Vijh,
Jt. Secretary (E),
Railway Board, Rail Bhavan,
New Delhi - 110 001.

... Respondent.

(By Shri S.C.Dhawan, Counsel)

O R D E R

(Per Shri B.S.Hegde, Member(J))

When the matter was taken up for final hearing the applicant was present in person and Shri S.C. Dhawan, counsel was present on behalf of the Respondents. The applicant stated that his advocate is held up in the High Court and sought for some time. We directed him to bring his advocate to argue the case. When the matter was taken up again, neither the applicant nor his advocate were present and hence we had 3 taken up the matter, perused the records and heard the learned counsel for the Respondents. After hearing ^{in court} the applicant had made his appearance and again requested for a short adjournment, but we rejected his contention, since the matter was already listed for hearing peremptorily.

2. In this O.A. the applicant is aggrieved by the order passed by the Respondents vide letter dt.1.5.89

...2.



retiring him compulsorily which reads as follows :

"WHEREAS the President is of the opinion that it is in the public interest to do so;

NOW, THEREFORE, in exercise of the powers conferred by Rule 2046(h) of the Indian Railway Establishment Code Volume II, the President hereby retires Shri B.R. Patil, PA/COS/Central Railway (Senior Scale), from service with effect from the date on which this order is served on him, he having already attained the age of 50 years on 11.10.1983. Shri B.R. Patil shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement in lieu of the notice."

3. The respondents in their reply raised a preliminary objection stating that the application is not maintainable both on the point of limitation, as well as, non-joinder of parties. On a perusal of the records, we find, that the applicant has impleaded only Shri T.N. Vihh, Joint Secretary, but not the necessary party i.e. Union of India which should be the necessary party. Insofar as, non-joinder of parties the Supreme Court has held in Udit Narain Singh Malpaharia V/s. Additional Member Board of Revenue, Bihar & Anr. (A.I.R. 1963 SC 786) as follows:

"A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

order of
In the instant case, the compulsory retirement was passed by the Union of India and the applicant ought to have impleaded the Union of India as a necessary party. The said order was passed by the President of India in exercise of the powers conferred under rule 2046 (h) of the Indian Railway Establishment Code, the said

rule reads as under :

"(h) Notwithstanding anything contained in this rule, the appointing authority shall if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any Railway Servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice.

(i) if he is in Class - I or Class - II service or post in a substantive or temporary capacity or in a Class-III post or service in a substantive capacity, but officiating in a Class-I or Class-II post or service and had entered Government service before attaining the age of thirty-five years, after he has attained the age of fifty years;

(ii) in any other case, after he has attained the age of fifty five years."

Thereby, the Respondents contend that the compulsory retirement order passed by the President of India is in accordance with the Rules and on the basis of the overall records of the applicant. There is no infirmity in the order. The applicant had made a representation only on 9.5.1991 against the ^{order of} compulsory retirement and the same was rejected on 14.8.1991 and thereafter he has filed the Original Application in 1992 though he was compulsorily retired in 1989 stating that he would have otherwise superannuated from service only in 1991. He has not alleged in the application any mala-fide or arbitrariness in the orders passed by the Respondents. It is further submitted, that the communication dt.14.8.1991 of the application is not the communication intimating the

applicant about the rejection of his representation by the President of India. The applicant was earlier informed vide letter dt. 8.9.1989 stating that the President had considered his representation dt. 26.5.1989 against the order passed in 1989 retiring him from service after consideration of various submissions made therein has concluded ~~that~~ there is no basis warranting the reversal of the earlier decision for retiring ^{employee} from service. ~~The~~ representation, therefore, has ~~not~~ been rejected by the President. In the light of the above, the respondents submit that the application is clearly barred by limitation and the same is not maintainable.

4. During the course of hearing, considering the background of the case, we had ^{directed} ~~requested~~ the learned counsel for the respondents to furnish the Confidential Reports of the applicant since 1980 onwards and accordingly the learned counsel for the respondents submitted the original C.Rs of the applicant. On a perusal of the same, from 1978 to 1988 we find that the CRs of the applicant is far from satisfactory and the Respondents after considering the CRs and the overall records of the applicant took a positive decision to retire him compulsorily, thus, we do not find any fault with the action taken by the Respondents which is in accordance with the rules. The Supreme Court in Baikuntha Nath Das & Anr. Vs. Chief D.M.O. Baripada (JT 1992 (2) SC.1) has clearly held as follows :

- (i) An order of compulsory retirement is not a punishment. It implies no stigma


nor any suggestion of misbehaviour.

- (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that Judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) malafide or (b) that it is based on no evidence (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order."

5. In the light of the above, having perused the service record of the applicant, we are satisfied, that the order passed by the respondents retiring the applicant compulsorily is in accordance with the rules and it is not for the Tribunal to interfere at this stage to quash the compulsory retirement order, especially issued by the President of India. In the result, the O.A. is rejected both on the point of merit, as well as, non-joinder of parties and limitation. No orders as to costs.



(M.R. KOLHATKAR)
MEMBER(A)


(B.S. HEGDE)
MEMBER(J).

B.