

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 235/93

250

26/11/99
Date of Decision:

C.B.Parate

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.C.Dhawan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

Hon'ble Shri. S.L.Jain, Member (J)

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

D.S.Baweja
(D.S.BAWEJA)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.235/93

25/11

Dated this the 26th day of November 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

C.B.Parate,
Ex-General Shop Superintendent,
CWM (EW), EW's Office,
Central Railway,
Manmad.

....Applicant

By Advocate Shri G.S.Walia

V/S.

1. Union of India
through General Manager,
Central Railway,
Bombay V.T.
Bombay.

2. Chief Bridge Engineer,
Head Quarter Office,
Central Railway,
Bombay V.T.,
Bombay.

3. Chief Workshop Manager (EW),
Central Railway,
Manmad.

...Respondents

By Advocate Shri S.C.Dhawan

O R D E R

(Per: Shri D.S.Baweja, Member (A))

This application is filed challenging the order dated 24.8.1992, through which the applicant has been prematurely retired from service with a prayer to set aside this order and allow the applicant full back wages, seniority and increments,etc.

2. The applicant was appointed on 16.11.1963 on Central Railway. He was promoted as General Shop Superintendent (Scale Rs.2375-3500) in the Engineering Workshop, Manmad, Central Railway in 1982. The applicant belongs to Scheduled Tribe category and got this promotion on the basis of reservation. The applicant has been retired prematurely as per the impugned order dated 24.8.1992. The applicant made a representation dated 22.10.1992 against this order. However, as per letter dated 30.10.1992, the applicant was informed that since the representation was submitted late beyond the period mentioned in the order dated 24.8.1992, the same could not be considered. Thereafter, the applicant submitted a representation dated 2.11.1992 to General Manager. But he did not get any reply for the same. Feeling aggrieved, the present OA. has been filed on 25.2.1993.

3. The applicant has assailed impugned order on the following grounds :-

(a) The impugned order is not based on any cogent or relevant material. No adverse remarks were conveyed at any time and the applicant had been promoted to the highest scale of Rs.2375-3500 as Supervisor after due process of selection.

(b) The impugned order has not been passed by the competent authority as Chief Bridge Engineer is not his appointing authority.

(c) The impugned order is actuated by malafides.

(d) Either there was no review committee set up or the committee did not comprise of competent authorised officers.

4. The respondents have contested the reliefs prayed for by the applicant in the two written statements. First to oppose admission and second detailed with parawise remarks. The respondents submit that the applicant had attained the age of 55 years on 1.7.1991 and action has been taken to retire the applicant prematurely by exercising power under Rule 1802 (a) of Indian Railway Establishment Code Vol.II. After careful consideration of the entire service record of the applicant, the high power committee comprising of senior officers formed the opinion that it was not in public interest to continue the applicant further in service. Competent authority has passed the impugned order based on the recommendations of the Committee. The respondents refute the contention of the applicant and reiterate that Chief Bridge Engineer was the appointing authority of the applicant. The respondents strongly deny the allegation of the applicant with regard to revengeful attitude taken against

the applicant due to belonging to Scheduled Tribe category and some officers and colleagues ~~unusual~~^{inimical} to him on account of his promotion to the grade of Rs.2375-3500. The respondents submit that these allegations are baseless as the applicant has not made any attempt to substantiate the same. Further, these allegations are not relevant to the impugned order. The applicant's first representation dated 22.10.1992 was not on merits as the applicant only wanted time which was accordingly rejected as per order dated 31.10.1992. Subsequently, his representation addressed to General Manager dated 2.11.1992 was received and based on the same, an appellate review committee was set up. This committee confirmed the recommendations of the first review committee which were accepted by the General Manager and papers ^{then} were sent to Railway Board. Railway Board confirmed the decision of the General Manager. Thus the respondents contend that the case of the applicant for premature retirement in public interest has been gone into objectively as per the extant rules.

5. The applicant has not filed any rejoinder reply for the written statement.

6. We have heard the arguments of Shri G.S.Walia and Shri S.C.Dhawan, learned counsel for the applicant and the respondents respectively. The respondents have made available the file containing the proceedings of both the review committees.

7. The issue of premature retirement in public interest has been examined by the Apex Court in a number of decisions. In this connection, we refer to the judgement in the case of Baikuntha Nath Das vs. Chief District Medical Officer, Baripara, 1992 (2) SLR 2. In this case, their Lordships after reviewing the earlier judgements have summarised the legal principles applicable for judicial review of the challenge of premature retirement in para 32 which are extracted below :-

"32. The following principles emerge from the above discussion :

(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) mala fide or (b) that it is based on no evidence or (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 a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter-of course attaching more importance to record of and performance during the later years.

The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 29 to 31 above.

8. As held above by the Apex Court whether the conduct of an employee is such as to justify the conclusion that his further retention in Government service is not in public interest is primarily for the departmental authorities to decide . The Courts will not interfere with exercise of this power except on the grounds as laid down in para 32 (iii) above. Keeping in focus the law laid down by the Hon'ble Supreme Court, we will now go into the merits of the impugned action of compulsory retirement of the applicant by the respondents taking into account the grounds advanced by the applicant.

9. The first ground of the applicant is that action of the respondents to retire the applicant prematurely is actuated by malafides. The applicant to support this submission has made a few allegations. He has stated that since his promotion in 1982 as General Shop Superintendent in the scale of Rs.2375-3500, some of the officers, colleagues and even his subordinates were ~~enemical~~ to him because the applicant being Scheduled Tribe was promoted against reservation quota. The applicant further alleges that the action of the respondents is prompted after

issue of letter dated 2.11.1991 as per which he was advised to desist from entering the offices of the other Shop Superintendents. The applicant also submits that malafide is also reflected due to the fact that representation of the applicant dated 22.10.1992 submitted against the impugned order dated 24.8.1992 was rejected simply stating that the same is submitted late. Even late representation could have been considered for natural justice and fair play. We find that these allegations are mere statements without laying any foundation for the same. These allegations are too flimsy and vague to have even a suspicion of malafides. As held by Hon'ble Supreme Court in the case of K.Nagraj and others vs. State of Andhra Pradesh, AIR 1985 SC 551, the burden to establish malafides is heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper and adequate proof. These ingredients are missing from the averments made by the applicants. The applicant has not brought as to whether at any time he brought to the notice of higher authorities of the harassment being caused to him because of belonging to Scheduled Tribe category since his promotion in 1982 when the order for compulsory retirement is passed only in 1992. The applicant has neither named the officers nor made anybody party respondent by name. If the applicant alleges that issue of letter dated 2.11.1991 was the basis for reviewing the case for compulsory retirement, (which as we deliberate subsequently was not the sole basis) then he should have made the concerned Chief Works Manager

as party respondent. As held by Hon'ble Supreme Court in the case of Express News Papers Pvt. Ltd. vs. Union of India, 1986 (1) SCC 133, where malafides are alleged, it is necessary that person against whom such allegations are made is joined as a party respondent so that he has occasion to meet with such allegations. In the light of these observations, we have no hesitation to conclude that plea of malafides has no substance.

10. The second ground is that since the applicant was promoted to the highest grade of Rs.2375-3500 in the supervisory cadre, through the process of selection, it would imply that his record was satisfactory. This contention of the applicant is not sustainable. Firstly, the respondents have stated that the post in the grade of Rs.2375-3500 is non selection and the same is not controverted. Secondly the applicant was promoted to this grade in 1982 and the impugned order has been passed in 1992 after about 10 years. His promotion in 1982 therefore does not mean that his performance thereafter is continued to be reckoned as satisfactory irrespective of his actual performance. This plea is far fetched and lacks any merit.

11. The third ground is that nothing adverse remarks were communicated to the applicant at any time after his promotion. We will be going into this aspect in detail subsequently while considering whether the subjective satisfaction of the competent authority to retire the applicant prematurely in public interest

is supported by the material on record. Here it is suffice to state that this contention has no merit in view of the law laid down in the case of Baikuntha Nath Das (supra) by the Hon'ble Supreme Court wherein it is held that an order of compulsory retirement is not liable to be quashed by court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration and the said circumstance, by itself cannot be a basis for interference. The same view relying upon this judgement has been expressed subsequently by the Apex Court in the case of H.G.Venkatachaliah Setty vs. Union of India, 1998 SCC (L&S) 152.

12. The fourth ground is that impugned order has not been passed by the competent authority as Chief Bridge Engineer is not the appointing authority of the applicant. The respondents have controverted this and reiterated that Chief Bridge Engineer is the appointing authority of the applicant. The applicant has not filed any rejoinder reply to contest this submission. The applicant has also not produced any documentary evidence to support his contention. In the light of these facts, we have no reasons not to accept the statement of the respondents. Therefore, this ground is also without any merit.

13. The fifth ground as stated in para 4.9 of the OA. is that either there was no review committee or the committee did not consist~~s~~ of the competent and authorised officers. The applicant just for making this statement has not disclosed the basis on

which such an averment has been based. On going through the relevant file made available by the respondents, we find that this allegation is without any basis and has been made just to advance a ground for assailing the impugned order. We find from the record that first Review Committee comprised of two Senior Administrative Grade Officers and the recommendations were accepted by the concerned Head of Department, i.e. Chief Engineer. On the representation made by the applicant to the General Manager, an appellate Review Committee at a higher level comprising of three officers which included one officer from the adjoining Railway, i.e. Western Railway as per the extant rules was set up. The recommendations of this committee were accepted by the General Manager and finally confirmed by the Railway Board.

14. The last ground and which is the main plank of attack of the applicant in challenging the order of compulsory retirement is that there was no cogent material before the Review Committee and the impugned order has been passed without application of mind. After going through the relevant file and the proceedings of the meetings of the first review committee as well as the appellate review committee, we are unable to subscribe to the contention of the applicant. We find that both the Committees* have reviewed the service records of the applicant over a period which included the confidential reports (in particular of the last five years), details of the penalties imposed and the list of

the warning letters (with their copies) issued to the applicant. From these details we note that there were 9 cases of minor penalty which covers seven cases after promotion of the applicant in 1982 to the scale of Rs.2375-3500 for misconduct, due to slack supervision, inefficiency and disobedience. The confidential reports upto March,1991 were considered by the first review committee. In the reports of 1986-87, 1987-88 and 1990-91 technical ability has been rated as 'poor' with the remark that same needs improvement. In the report of 1989-90 & 1990-91 it is also remarked that the applicant is not able to conduct inquiries and has also refused to conduct inquiries. His classification in the reports is average and in the report of 1990-91 it is below average. The applicant has put forward a defence that no adverse remarks had been conveyed at any time. However, we find on record a list of 61 warning letters issued since 198⁹ to the applicant which were put up before the committees. These deal with negligence of duty, disobedience, irregular attendance, non attendance on the shop floor, unauthorised entry in the offices and other issues connected with the performance of the applicant as a supervisor. The issue of these warning letters to the applicant reflect the objective appraisal of the performance in the confidential reports of the various years. The applicant had been time and again made aware of his unsatisfactory performance over several years and even taken up under disciplinary proceedings and penalty imposed. After perusal of the above referred record, we are of the opinion that there was sufficient

material before the review committees to record satisfaction that it was not in public interest to continue the applicant further in service. On careful reading of the minutes of the committee, we are unable to accept the contention of the applicant that decision has been arrived at without due application of mind. In view of these deliberations, we are unable to find out any reason to fault the conclusion of the competent authority in retiring the applicant prematurely as per the impugned order. The impugned order is thus legally sustainable. In this connection, we refer to what is held by the Hon'ble Supreme Court in the case of Posts and Telegraphs Board vs. C.S.N.Murthy, 1992 (2) SLR 352.

15. The applicant has cited the following judgements in support of his case :-

(a) High Court of Punjab and Haryana vs. Ishwar Chand Jain, 1999 AIR SCW 1298.

The applicant has cited this judgement to make his point that the action to retire an employee compulsorily cannot be taken for the allegation of misconduct which is a subject of an inquiry. The applicant has submitted that applicant has been retired prematurely mainly on account of the misconduct as alleged in the letter dated 2.11.1991. For this misconduct, if any, a disciplinary action could have been taken but instead the respondents have resorted to short cut of reviewing the case of applicant under Rule 1802 (a) of Indian Railway Establishment Code Vol.II. As stated earlier, on going through the

deliberations of the review committees, we find that the satisfaction has been arrived at after considering the entire record of several years and misconduct as indicated in the letter dated 2.11.1991 is only one incident and is not the sole basis for the impugned action of the respondents. Further, no disciplinary action or inquiry was in process against the applicant as was the position in the cited case. In view of these facts, we are of the view that ratio of what is held in this cited judgement does not apply to the case of the applicant.

(b) Rajat Baran Roy & Others vs. State of W.B. & Ors.

1999 SCC (L&S) 852.

In this judgement, Hon'ble Supreme Court has gone into the challenge of compulsory retirement. Based on the facts of the case, the Hon'ble Supreme Court has observed that there was no indication in the impugned orders that any aspect of public interest and ingredients of the relevant rule were specifically taken into consideration while issuing the impugned orders. Accordingly, the impugned orders were held bad on account of non application of mind and want of material particulars which were mandatory for invoking of the rule. Such is not the situation in the present case as deliberated in para 14 above. We have recorded our findings that the satisfaction of the competent authority that the applicant is not fit to continue in service in public interest is supported by adequate material

on the record and has been arrived at by due application of mind. The impugned action of the respondents therefore cannot be faulted. In view of this, it is our considered opinion that this cited judgement does not advance the case of the applicant.

16. In the background of the above deliberations, we are constrained to conclude that the OA. is devoid of merits and deserves to be dismissed. OA. is accordingly dismissed with no order as to costs.

S.L.JAIN
(S.L.JAIN)

MEMBER (J)

D.S.BAWERAT
(D.S.BAWERAT)

MEMBER (A)

mrj.