

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 347/93

Date of Decision: 21.6.99.

Jia Singh Kachwaha.

Applicant.

Shri B.S.Thingore.

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri M.S.Ramamurthy.

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice K.M.Agarwal, Chairman,

Hon'ble Shri. A.K.Ahooja, Member (A).

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

*KM*

(K.M.AGARWAL)  
CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.347/93.

Monday this the 21st day of June, 1999.

Coram: Hon'ble Shri Justice K.M.Agarwal, Chairman,  
Hon'ble Shri R.K.Ahooja, Member(A)

Jia Singh Kachwaha,  
Chief Personnel Officer (Admn.)  
in the Office of the General Manager,  
Western Railway Headquarters Office,  
Old Building,  
Churchgate,  
Bombay - 400 020.

...Applicant.

(By Advocate Shri B.S.Thingore)

Vs.

1. Union of India through  
General Manager, Western Railway,  
Churchgate,  
Bombay - 400 020.
2. Union of India through its  
Chairman Railway Board,  
Rail Bhavan,  
New Delhi.
3. Union of India through its  
Secretary,  
Railway Board,  
Rail Bhavan,  
New Delhi.

...Respondents.

(By Advocate Shri M.S.Ramamurthy)

: O R D E R :

(Per Shri Justice K.M.Agarwal, Chairman)

By this O.A. the applicant has made a prayer for quashing the order of Compulsory Retirement passed by the Joint Secretary (E), Railway Board.

2. Briefly stated, the applicant was Chief Personnel Officer in the Office of the General Manager, Western Railway, Bombay. At the age of 56 1/2 he was served with the notice of Compulsory Retirement. In lieu of notice period of three months, he was paid three months salary after deducting the amount of Income-tax.

Being aggrieved, he has filed the present O.A. for ~~the~~  
~~for~~ aforesaid relief.

3. The learned counsel for the applicant submitted that before passing the impugned order of compulsory retirement, the Competent Authority did not evaluate his overall performance in the Department. The order was alleged to be mala fide and also illegal, because the full salary for three months in lieu of notice period was not paid to him. It is not disputed that under Rule 1802 of the Indian Railway Establishment Code, Vol.II any Railway Servant could be given Compulsory Retirement in public interest by giving him notice of three months in writing or three months full salary in lieu of such notice.

4. In Union of India & Ors. Vs. Nasirmiya Ahmadmiya Chauhan (1994) 28 ATC 66 (SC), which was a case of a Post Master in the service of the Union of India, it was found by the Supreme Court that the Ahmedabad Bench of this Tribunal had quashed the order of Compulsory Retirement on the ground that the instructions dt. 5.1.78 issued by the Ministry of Home Affairs for reviewing the case of Government Servants for pre-mature retirement were not complied with in the case of the employee. Review was not upheld and accordingly the decision of the Tribunal was quashed by holding as follows :

"We have heard learned counsel for the parties. This Court has authoritatively laid down in various judgments that the power under Fundamental Rule 56(j) can be exercised by the appropriate authority at any time in public interest after the government servant has attained the relevant age or has completed the period of service as provided under the Fundamental Rules. The appropriate authority has to form the opinion that it is in the public interest to retire a person under Fundamental Rule 56(j) on the basis of the service record of the person concerned. There is no other bar for the exercise of the power under the said Fundamental Rule by the prescribed authority. Government instructions relied upon by the Tribunal are only the guidelines laid down by the Central Government for its functioning. A government servant can be heard to say that though the order of retirement is justified on the basis of his service record

Jm

but since there is violation of some Government instructions the order is liable to be quashed. The Tribunal was wholly unjustified in holding that prejudice was caused to the respondent in the sense that he could legitimately believe that under the instructions his case would not be reviewed after the lapse of certain period. The action under Fundamental Rule 56(j) against a government servant is dependent on his service record earned by him till he reaches the age or completes the service provided under the said rule. If the record is adverse then he cannot take shelter behind the executive instructions and must be "chopped off" as and when he catches the eye of the prescribed authority."

We accordingly find no substance insofar as the first argument of the learned counsel for the applicant.

5. There appears no material on record to show that the order of Compulsory Retirement was arbitrary or attempted with mala fide.

6. The three months salary of the applicant amounted to Rs.31,260/-, but he was actually paid a sum of Rs.24,439/- in lieu of three months salary for the period of notice. The respondents in their reply have expressed that initially they had deducted a sum of Rs.6,821/- towards Income-tax, but later on, out of the amount of the income-tax deducted was paid to the applicant on receipt of revised Income-tax declaration form. Accordingly, we find no merit in the argument of the learned counsel for the applicant in this regard also.

7. We may also mention that the learned counsel for the respondents produced before us all the relevant records of the proceedings before a decision was taken to retire the applicant compulsorily. It is also seen that all the Members of the Board were present in the meeting and it was noted that the Compulsory Retirement of the applicant is on the basis of his past service. As held by the Supreme Court in Baikuntha Nath Das and

*Th* Anr. Vs. Chief D.M.O., Baripada (JT 1992 (2) SC.1), an

order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of mis-behaviour. It was further said that 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 ~~even~~ the Supreme Court would not examine the matter as an Appellate Court, they may interfere if they are satisfied that the order is passed (a) malafide (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 perverse order. As earlier stated there is no material to show that the order passed is malafide. It is based on materials available on the file and the order of Compulsory Retirement cannot be said to be a perverse order.

8. For the foregoing reasons, this O.A. fails and it is hereby dismissed, but without any order as to costs.

~~R.K. AHOOGA~~

(R.K. AHOOGA)  
MEMBER (A)

~~J.M.~~

(K.M. AGARWAL)  
CHAIRMAN