IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 131/94

Date of Decision: 27/4/98

R.B.Sharma — Applicant.

Shri M.S.Ramamurthy — Advocate for Applicant.

Versus

Union of India & Ors. — Respondent(s)

Shri R.K.Shetty for R-1.
Shri V.D.Vadhavkar for Shri M.I. Sethna for R-2. — Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. P.P.Srivastava, 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? No

(P.P.SRIVASTAVA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 131/94

Pronounced this the 27th day of April 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

R.B.Sharma, I.P.S.(1964),
Dy.Inspector General of
Police, S.R.P.F. Ram Tekdi,
Pune-22.

By Advocate Shri M.S.Ramamurthy ... Applicant

V/S.

1. Union of India
through the Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi.

2. State of Maharashtra
through the Chief Secretary,
Government of Maharashtra,
Mantralaya, Bombay. ... Respondents

By Advocates Shri R.K.Shetty for
Respondent No. 1 and Shri V.D.Vadhavkar
for Shri M.I.Sethna for Respondent No.2

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

The applicant joined the Indian Police Service in 1968 as a released emergency commissioned Officer after having been duly selected by U.P.S.C. The applicant was given four years seniority for his past Army service assigning him the year 1964 for the purpose of seniority in the Maharashtra Cadre of IPS. The applicant was discharged from service by an order dated 23.4.1973 which was challenged by the applicant in the Hon'ble High Court at Delhi. The applicant succeeded in the petition before the High Court and

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he was reinstated in service on 27.1.1982 and the applicant was entitled to pay and allowances from the date of discharge to the date of his posting. The applicant was thereafter promoted to the Selection grade of IPS scale Rs.4500-150-5700 with effect from 1.1.1978, that is the date from which his immediate junior Shri Gyan Chand Verma IPS (1965) was promoted as such. By the same order the Government of Maharashtra also promoted the applicant to the further higher rank of Deputy Inspector General of Police w.e.f. 5.9.1981. The applicant was given all the financial benefits due to him on account of the said two promotions vide the Government's orders dated 7.12.1993 which are placed at Exhibits "G", "H" and "I" of the OA. The applicant took the charge of the post of Deputy Inspector General of Police, S.R.P.F., Pune on 10.12.1993. The applicant made a representation dated 16.12.1993 claiming promotion as Inspector General of Police and above from the date his junior G.C.Verma stood promoted to the said higher ranks which is placed at Exhibit-"J".

2. The applicant was compulsorily retired by order dated 2.2.1994 in terms of Rule 16 (3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958. Aggrieved by the order of compulsory retirement, the applicant has approached this Tribunal and has sought the relief that the order dated 2.2.1994 compulsorily retiring the applicant be held null and void and be quashed, and the applicant be paid all the consequential benefits.

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3. The respondents have filed a reply and have opposed the application.

4. The applicant has challenged his compulsory retirement on many grounds. The applicant has brought out that he was promoted with retrospective effect by the order dated 7.12.1993 and therefore the decision to compulsory retire the applicant is on irrelevant and/or extraneous considerations. The applicant has brought out that he cannot be found to be fit for promotion to the higher ranks on 7.12.1993 and also found to be unfit to be continued in service in public interest in 1994. If the record of the applicant was not good, then he could not have been promoted on 7.12.1993. The fact of promotion of the applicant on 7.12.1993 shows that the applicant was not only fit to continue in service but was fit for promotion upto 7.12.1993. Therefore the order of compulsory retirement in 1994 done after about two months of his order of promotion is not on the basis of record as the applicant was found fit for promotion in December,1993. The applicant has further brought out that the record of service prior to his promotion to higher ranks cannot be taken into account for compulsorily retiring the applicant after the date of such promotion. Therefore, the respondent administration cannot have any material on the date of his promotion which would support the applicant's compulsory retirement on 2.2.1994.

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5. The applicant has further brought out that some adverse remarks were written in the ACRs between 1982 and 1985. The applicant was not in service from 1973 to 1982 and no ACRs could have been written for the years, since he was reinstated after the discharge as has been brought out in Para 1 of the OA. The applicant has further brought out that for the years 1982-83 and 1985 adverse remarks were written in ACRs but on his request the same were expunged. The applicant has also brought out that the State Government has also expunged the remarks for 1985. The applicant has further brought out that adverse remarks for 1985-86 and 1986-87 are under challenge before the CAT Delhi and Bombay Benches and cannot be taken into account. The applicant has further brought out that in view of the promotion of the applicant on 7.12.1993 the adverse remarks for the years 1985-86 and 1986-87 have lost their validity and relevance. The applicant has, therefore, brought out that the record of service of the applicant from 1973 to 1994 is unblemished and clean.

6. The applicant has further brought out that in terms of the Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 the review was required to be initiated prior to the applicant's attaining the age of 50 years and secondly at the age of 55 years. Since the applicant had not attained the age of 55 years on 2.2.1994, the record upto the age when the applicant attained the age of 50 years have been considered. Thus the order which was passed in 1993 ignores the service record of applicant between 1990 and 1993, i.e. immediately preceding four years and therefore the compulsory retirement which is on

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the basis of record which was upto the year 1990 is arbitrary and is against the rule and against the instructions of the M.H.A., Government of India.

7. The applicant has also brought out that his case was considered by the Government of Maharashtra under Rule 16(3) within six months prior to his attaining the age of 50 years on 18.11.1989 and the applicant has reasoned to believe that the Government of Maharashtra has considered the case of the applicant as fit for Government service and has recommended the case of the applicant to Ministry of Home Affairs, Government of India. The applicant has brought out that the then Secretary, Ministry of Home Affairs, Govt. of India Shri M.D.Godbole, who is believed to have disagreed with the recommendations of the State Government because of applicant's successfully challenging the order of his illegal discharge in the High Court, and it is only as a measure of revenge that the impugned order is passed which is not based on any objective consideration and is arbitrary and malafide.

8. Respondents have filed the reply. Respondent No.1 Government of India have brought out that they in general deny the allegations made by the applicant and have brought out that the order passed by the respondents is in terms of rules and according to the law laid down by the Hon'ble Supreme Court in the case of Baikuntha Nath Das & Anr. vs. Chief District Medical Officer, Baripade and Anr. Civil Appeal No.869 & 870 of 1987 decided on 19.2.1992 reported in (1992) 21 ATC 649.

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9. The State of Maharashtra, Respondent No. 2 have also filed a reply. The Respondent No. 2 has brought out in Paras 5,7,10 that the promotion order on 7.12.1993 for giving promotion to the applicant retrospectively from 1.1.1978 and 5.9.1981 to the post of Selection grade and to the post of Deputy Inspector General of Police was issued for complying with the order of the Delhi High Court and this has nothing to do with the service record of the applicant. They have further brought out that while promoting the applicant to the Selection grade and DIGP, his performance etc. was not considered but the promotion was given in view of the Delhi High Court judgement. Therefore, the respondents have argued that the deemed date of promotion granted to the applicant vide their order dated 7.12.1993 would not mean that the adverse entry in the ACR have lost its validity as alleged by the applicant. The respondents have further brought out that this deemed date of promotion did not mean that the service record of the applicant upto the year 1993 was considered for deciding his promotion and that he was promoted on the basis of service record.

After considering arguments of both sides, we are of the view that the promotion in 1993 has been granted to comply with the High Court orders and that the service record has not been considered in granting these promotions. Therefore applicant's argument cannot be accepted that in view of these promotions his service record upto 1993 cannot be considered so as to enable the Government to prematurely retire him.

10. The respondents have produced the record to show the procedure which has been followed in deciding the case of the applicant. It is seen from the record that the State Government has recommended the case of the applicant for retention after 50 years. It is seen from the record that there were difference of opinions in the Government of India whether to retire the applicant pre-materely or not. However, ultimately from the record it is seen that the Government decided to

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retire the applicant pre-maturily and not to continue him beyond 50 years of age. During the consideration of applicant's case all the record of the applicant as well as special emphasis on the last 5 years was brought on record in the noting dated 22.2.1993 on file. It was also brought out that according to rules it will be the duty of Central Establishment Board to decide about premature retirement in respect of officers below the grade of Joint Secretary. It is also seen from the noting that the Department of Personnel wanted certain clarification from the Home Ministry which was given by the Ministry with the request to the DOP to let the Central Establishment Board make its recommendation. It is seen from the record and noting dated 24.8.1993 that the Central Establishment Board felt that further continuance in service of the applicant will not be in public interest and recommended that he may be retired from service. The recommendation of the C.E.B. was therefore put up for approval which has been approved by the competent authority. The same was then put up before the ACC. It is also seen from the record that these recommendations were sent to ACC who recommended the pre-mature retirement of the applicant.

11. The respondents have also produced the Confidential Report of the applicant. The whole CRs. have been taken into account on the basis of which the Government of Maharashtra has considered that the applicant was fit to be retained in service. However, after consideration of the record, the Government of India has come to the conclusion that the applicant is required to be retired pre-maturely at the age of 50 years.

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From the record, it is seen that there is application of mind by the various authorities on the issue whether the applicant would be retired pre-maturely or not. This being a marginal case, some of the notings in the file show that the applicant should have been retained in service but on overall consideration the competent authority has come to the conclusion that the applicant should be retired pre-maturely. This particular issue has been considered by the Hon'ble Supreme Court in AIR 1977 SC 2411 (Union of India vs. Chandra Mohan Nigam & Ors.) decided on 19.9.1977. In this case, the State Government had recommended the retention of the applicant but the Central Government had not agreed with that and therefore had sent back the matter to the State Government for reviewing the case. The Apex Court had come to the conclusion that the Central Government could not have referred the case back to the State Government for review. In Para 28 the Hon'ble Supreme Court has observed as under :-

> "28. We find from the instructions that reviews have to be conducted twice in the career of a Government servant, once six months prior to his attaining the age of 50 years and again six months prior to his attaining the age of 55 years. Since the amendment introducing the age of 50 years came in August 1969, after the respondent had already attained 50 years, the first review in his case could be held only in Oct.1969. The second Committee sat in May 1970 after the first Committee had recommended the continuance of the respondent in service in October 1969 which was agreed to by the State Govt. and even reiterated by it on a query from the Central Government in Jan,1970. If the Central Government did not choose to decide against the respondent then, the second Review Committee of May 1970 could not again consider the case of the respondent in the usual normal circumstances when he was not even 53 years of age after having already got a clearance from the first Review Committee which was endorsed by the State Govt. only four months earlier. It was open to the Central Govt.to differ from the State Govt.'s views. But it did not. We must make it clear that the decision would have been entirely different if we were satisfied that there were exceptional circumstances of any kind to reopen the case of the respondent."

12. The learned counsel for the applicant has argued that the retirement of the applicant on 2.2.1994 was after he attained the age of 50 years and before he attained the age of 55 and therefore the respondents have considered the material in 1994 which could not have been made available to them before the applicant attained the age of 55 years. The respondents on this issue have argued that the applicant's case was never reviewed by the State Government again. The State Government has recommended the retention of the applicant however, the Central Government had differed from the State Government in this case which is valid in the frame-work as has been brought out in the above judgement. We are of the opinion that on the basis of facts available the ratio laid down in the judgement of Chandra Mohan Nigam does not help the applicant. Nowhere it is seen that the State of Maharashtra has sent another recommendation at the request of Central Government after the first recommendation in this case. In this case, the Central Government has decided to differ from the State Government. We also find that various authorities have applied their mind while coming to the conclusion that the applicant is not fit to be retained beyond the age of 50 years and should be pre-maturely retired.

13. The respondents have heavily relied on the decision of Baikuntha Nath Das & Anr. vs. Chief District Medical Officer, Baripada & Anr. (1992) 21 ATC 649 decided on 19.2.1992. The Hon'ble Supreme Court in this case has laid down certain principles which are required to be followed in the case of compulsory retirement in Para 34 which read as under :-

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"34. 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."

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14. The learned counsel for the respondents has argued that in view of the clear-cut principles laid down by the Hon'ble Supreme Court, the plea raised by the applicant do not survive. It is seen that the Hon'ble Supreme Court has laid down that 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. It is also laid down that "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."

15. We have ourselves personally went through the service record of the applicant made available by the learned counsel for the respondents. We find that there are some adverse remakrs against the applicant in some years, some entries in some years are favourable to the applicant being shown as "good" and some years the work or performance of the applicant is shown as "average". It is well settled that before taking a decision about compulsory retirement of an official in public interest under Rules, the entire service record should be considered as a whole. It is the respondents' case that by taking an over all picture of the entire service record of the applicant, they have decided the compulsory retirement of the applicant in public interest. It is quite possible that two views may be taken on the basis of service record. When the Administration has applied its mind and taken a decision, viz. to retire the applicant compulsorily from

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service in public interest, by exercising the power of judicial review this Tribunal can not interfere even if another view is equally permissible on the basis of service record. The scope of judicial review is limited. In judicial review what the court or Tribunal has to see is the legality of the decision making process and not the decision itself. If the competent authority has considered the entire material and has come to one conclusion, we cannot interfere with the same only on the ground that another view is possible. The other ground on which judicial review can be exercised is if there are malafides in the competent authority in exercising the power in question.

We have to bear in mind that the matter is considered by the competent authorities at the highest level. The matter is placed before the A.C.C. which means Appointments Committee of the Cabinet which consists of the Prime Minister of India, the Home Minister and the Minister for the concerned department. When such a high level committee has taken a decision after following the regular/usual procedure and after considering the entire service record, we cannot in the guise of exercising judicial review interfere with such an order, unless the applicant can establish that the required procedure is not followed or the order suffers from malafides.

16. The applicant has brought out in his OA. that the then Home Secretary Mr.M.D.Godbole was against the applicant and he has been prejudice to him. However, neither the applicant has made Mr. Godbole as party respondent nor there is any material for us to come to the conclusion that Mr.Godbole was against the applicant.

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As is well known, in the case of prejudice, it is necessary to make the person concerned a party and also that the proof required to come to the conclusion that certain person is prejudice against the applicant have to be strict. There is no material on record to show that Mr.Godbole was prejudice against the applicant. Therefore, the ground of prejudice is not available to the applicant. It is also seen that the final decision is not that of aforesaid person but of the Home Minister and further that of ACC through the Establishment Committee. We are, therefore, satisfied that there is bonafide application of mind in the case of the applicant for coming to the conclusion by the respondent administration.

17. We are, therefore, of the view that the applicant has not been able to make out a case for our interference. OA. is, therefore, dismissed with no order as to the cost.

(P.P.SRIVASTAVA)
MEMBER (A)

27-4-98
(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.