

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:

284/1994

Dated this Friday the 21st day of September, 2001.

Mahesh Gopal Nayak Applicant

Advocate Shri G.S.Walia Advocate for the
Applicant

VERSUS

The State of Maharashtra & another Respondents

Advocate Shri V.S.Masurkar Advocate for the
Respondents

CORAM: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

- (i) To be referred to the Reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to other Benches of the
Tribunal? *No*
- (iii) Library. *No Yes.*

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ORIGINAL APPLICATION NO.: 284 of 1994.

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CORAM : Hon'ble Shri B. N. Bahadur- Member (A).
Hon'ble Shri S.L.Jain - Member (J).

Mahesh Gopal Nayak,
Residing at 5/20, Jai Jalaram
Co-operative Housing Society Ltd.,
Kharkar Alee, Thane - 400 601
Working as
Deputy Secretary to Government,
Industries, Energy & Labour
Department, Govt. of Maharashtra,
Room No. 118 (Annexe),
Mantralaya, 1st floor,
Bombay - 400 032. ... Applicant.
(By Advocate Shri G. S. Walia)

VERSUS

1. The State of Maharashtra,
through the Chief Secretary,
Government of Maharashtra,
Mantralaya,
Bombay - 400 032.
2. Union of India through
The Secretary,
Ministry of Personnel, Public
Grievances & Pension,
(Deptt. of Personnel & Training),
New Delhi. ... Respondents.

By Advocate Shri V. S. Masurkar for
Respondent No. 1 and Shri R. K. Shetty
for Respondent No. 2.

ORDER

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Shri Mahesh Gopal Nayak challenging the order of Government of India dated 15.12.1993 (Exhibit 'B') retiring the applicant from service in public interest, after his having attained the age of 50 years. The order of Government of Maharashtra dated 29.12.1993, through which the aforesaid order has been conveyed, is also challenged.

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2. The facts of the case, as brought out by the applicant, are that having joined the State Civil Service in 1964, he was appointed to the Indian Administrative Service vide Notification dated 30.8.1982. He was confirmed in the IAS, vide order dated 2.12.1988 (Exhibit 'A'). The applicant states that his date of birth being 6.8.1941, he would have normally continued till the usual age of superannuation, but for this action of premature retirement by the respondents. The applicant alleges that interested persons have been subjecting him to harrassment, exemplified by the fact that he had to face reversion from IAS cadre vide order dated 6.3.1987, which order was set aside by the President of India, on representation made by him. (He adds that the reversion order was not implemented at any time).

3. The applicant then goes on to describe his service career, citing the instances of prejudice against him, as well the details of good work done by him during his career. The aforesaid acts of prejudicial action also led to chargesheet/statements of allegations being served upon him in February, 1992 which was nearly ten years after the incident of allegation. Details of facts and circumstances have been given in the O.A. A departmental enquiry, it is stated, was in fact, in progress when the applicant was served with the impugned orders of compulsory retirement in December, 1993.

4. Several grounds of challenge have been set out under the appropriate paragraphs which, among others, have been argued ^h ~~been~~ argued on behalf of the applicant during oral arguments.

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5. There are two respondents in the case. Respondent no.1 being the State of Maharashtra through its Chief Secretary, and respondent no.2 - being the Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pensions. Both the respondents have filed written replies. In its written reply the State Government of Maharashtra first describes what is called the unsatisfactory nature of the work of the applicant between his appointment to the I.A.S. and his confirmation. Details regarding some of the specific instances and the controversies during various postings of the applicant (such as Additional Collector , Thane) are provided in the written reply of the Maharashtra Government. It is denied that there is an attempt at a witch-hunt against the applicant and the point made is that even where some of the orders are made by the applicant are made in quasi-judicial capacity it does not mean that no action can be taken in this regard against the applicant, since he has decided a large number of cases in violation of the rules and procedures. Details are then provided in this regard including details as to why holding of a regular departmental enquiry became necessary.

6. It is contended that the order of retirement is not a punishment and that the departmental enquiry and the act of compulsory retirement are independent events, not related to each other. The latter is based on overall assessment of his confidential record. Shri Nayak's case, it is stated, was considered on 6.8.1991 by the Review Committee constituted by the State Government as per guidelines of Government of India. The recommendation of the Review Committee was made to the effect that



the applicant was not fit for retention in service beyond the age of 50 years. It is pointed out that the performance of the applicant is revealed by the Annual Confidential Reports and not by certificates of training etc. as made out by him. Also, that the impugned order was made not only on the basis of one adverse remark as mentioned by the applicant, but by taking into consideration the overall reports.

7. The reply of the Union Government states that the applicant's performance was consistently "Average" and since 'average' grading in an ACR is not considered adverse as such, it was not necessary to communicate it. The respondent cites case law in this regard which makes a point that a judicious exercise of the power conferred in it has been made. The intention of Rule 16(3) of the All India Service (Death-cum-Retirement) Rules, 1958 is to weed out dead-wood in order to maintain high standards of efficiency and initiative, and also to weed out officers of doubtful integrity and those who have outlived their utility and become ineffective. Both factors of 'Average' performance and doubt of applicant's integrity have weighed with Government in making a decision to retire him as done.

8. The reply of the Union Government further states that the decision for confirming the applicant in the I.A.S. w.e.f. 1.7.1988, after the expiry of extended period of probation was expounded in Para 5 of the reply. Further, in Para 7 of the reply the point is made that the entire service record of an officer has to be gone into with special emphasis of more recent performance. Thus the expression "service records" implies all relevant record

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concerning the Member of the service and the review is not confined to the consideration of ACR dossier alone. The high standards expected to be maintained in regard to efficiency and integrity by officers of All India Services is then referred to and the support is drawn from the judgment of the Hon'ble Supreme Court in the matter of Union of India Vs. M.E.Reddy (AIR 1980 SC 563). It is contended that public interest is served by the retirement of officers like the applicant.

9. We have seen all papers in the case including rejoinder/additional statements filed on behalf of the respective sides and have heard the learned counsel on both sides.

10. The learned counsel for the applicant Shri G.S.Wafia argued the case in detail. He first took us over the facts of the case and made the point that it be presumed that upto 1986 when the applicant was confirmed in IAS there was no record to warrant any adverse action. The applicant had been exonerated in all enquiries held. The learned counsel drew our attention to various compliments and certificates bestowed upon the officer (page 91 to 95) to make the point that the officer did not warrant to have being called " dead wood " i.e. totally useless. Only one entry which was adverse, as communicated to him vide letter dated 1.6.1985 (page 130) could not become the basis of such severe action of retirement at 50. The representation on this (page 131) had been disposed of summarily by a short letter dated 18.9.1987 (page 134). There was no reply to the representation to the Union Government. Thus the point was made that representations had not been dealt with properly by either respondents. ^m or

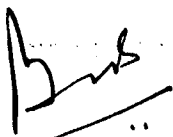
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11. The learned counsel for the applicant made the point more than once that the system by which people could be retired after attaining the age of 50 years contemplated the removal only of deadwood and that his client could not by the facts available be termed as dead wood at all. In regard to the allegation of doubtful integrity the learned counsel stated that there was only one remark as referred to of the year 1983-84. The learned counsel made this point that this aspect had been dealt with in the case law which he cited. The learned counsel cited the following cases in support of the contentions made by him in oral and written pleadings -

1. Baikuntha Das and another Vs. Chief District Medical Officer Baripade & another, Civil Appeal No. 869 & 870 of 1987 decided on 19.2.1992, (1992) 21 ATC 649.
2. Union of India Vs. Col. J.N. Sinha, 1971 (1) SCR 791.
3. S. Ramchandra Raju Vs. State of Orissa, 1995 (1) SCC 273
4. Brij Behari Lal Agarwal Vs. Hon'ble High Court of Madhya Pradesh & others, (1981) 1 SCC 490.
5. Madan Mohan Choudhary Vs. State of Bihar & others, 1999 SCC (L & S) 700.

12. The learned counsel for respondents Shri R.K. Shetty argued the case for respondent no. 2 i.e. Union of India and first made the point that the integrity of the applicant was not certified for the year 1983-85 and that this point went squarely against the applicant. He also made the point that the Review Committee which was duly appointed as per law and rules had found the officer's

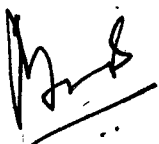


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performance to be 'Average' and had recommended the course of compulsory retirement upon the review. Also that entire record had been considered and that imposed all the gradings were indeed 'average'. Learned counsel Shri Shetty cited certain case law which we shall deal with ahead.

13. Arguing the case on behalf of respondent no.1 i.e State of Maharashtra their learned counsel Shri V.S.Masurkar made the point that system of 'average' was also good enough a yardstick for the action of retirement at 50 since the officer belonged to a service like the All India Service and after experience of all these years was expected to have very high standards if he was to be allowed to continue. It was pointed that there was no malafide on anyone's behalf alleged and no infirmity on the grounds of procedure since all procedure was duly followed as per law by the Hon'ble Supreme Court. These are the points that only could be important points made therein. The learned counsel stated that besides the case law depended upon by the Union Government, the principles enunciated by the Hon'ble Supreme Court in the matter Badrinath Vs. Government of Tamil Nadu & others, 2000 (2) S.C.S.L.J.341 were important.

14. Re-arguing his case briefly the learned counsel Shri Walia reiterated that the touchstone of declaring a person as a dead wood was important and that an 'average' person could not be classified as dead wood. The case in the matter of The State of Sikkim and others Vs. Sonam Lama & others, AIR 1991 SC 534 was depended upon as also the case of Swami Saran Saksena Vs. State Uttar Pradesh, 1980 SCC (L&S) 129.



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15. We have seen all papers in the case and have carefully considered the arguments made before us by both the learned counsel. We have had the benefits of going through the original records in the case namely the CR dossier of Shri M.G.Nayak (applicant) produced by the respondents during arguments as also the file of General Administration Department, Government of Maharashtra No.AIS-2590/CR-156-X titled "Review at the age of 50 years - IAS officers". In the first instance we find that the review of the case of the applicant was taken up by a Committee consisting of Chief Secretary and two seniormost serving cadre officers. The minutes of the Review Committee meeting are on record and in that we find that the applicant is found to "definitely fall in the category of 'average'". Further the Committee had decided that he should be recommended to be compulsorily retired from government service. The procedure in regards to consideration by proper authority is thus followed. We have also perused the confidential records of the applicant from the year 1992 backwards. In terms of settled law we will not peruse these records as if we are sitting in appeal but only with a view to finding whether in assessing these CRs, the Committee has been either grossly unfair or has arrived at decisions which do not warrant to be arrived at all giving the general tenor of the confidential records. We certainly do not find that the decision on the basis of these CRs can be termed as anywhere mere unfair, unjust or perverse. It is well settled that before taking a decision of compulsory retirement of an official in public interest, the entire service record should be considered as a

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whole. It is the case of the respondents that they have decided on compulsory retirement after going through the overall record of the officer and also that the decision has nothing to do with the departmental enquiry that was in progress. It is true that when two opinions are possible of an assessment of a person and when there is nothing that is clearly unreasonable, Tribunals like ours cannot go into the matter as if it was an appellate authority. In such cases the decision of the administration should be regarded as correct and final. The learned counsel for the applicant took pains to make the point that even if the officer was 'Average' he did not come into the category of being a dead wood. Here we note that there is no definition of a "dead wood", as such though the expression has been used in several places not excluding judicial pronouncements.

16. The respondents have depended heavily on the judgment of the Hon'ble Supreme Court in the matter of Baikuntha Das (supra). The Hon'ble apex Court has considered the subject relating to compulsory retirement in great detail and has enunciated some principles relating to compulsory retirement. These are listed at Para 32 of the judgment. In brief it is held that an order of compulsory retirement is not a punishment and implies no stigma. Further that the order has to be passed by Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. It is noted that "the order is passed on the subjective satisfaction of the Government". Enunciating further principles, the Hon'ble Supreme Court has held that principles of natural justice have no place in the context of

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an order of compulsory retirement which of course does not mean that judicial scrutiny is altogether excluded. Courts/Tribunals can interfere if the order is passed mala fide or is based on no evidence or is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material i.e. if it is found to be perverse. It is also held that an order of compulsory retirement is not liable to be quashed by any court merely on the showing that adverse remarks were not communicated.

17. We have gone through the case law cited by the learned counsel as reproduced above in Para 11 and Para 14. In the matter of Col.J.N.Sinha (supra) the ratio settled does not come to the assistance of the applicant's case and in fact this has been discussed and explained in the case of Baikuntha Das (supra). In the matter of S.Ramchandra Raju (supra), relief is provided to the applicant therein on the ground that the order of compulsory retirement made on the basis of solitary adverse confidential report in that case was not enough to compulsorily retire an officer. In the present case also the applicant had tried to argue that the Applicant has been communicated with only a single adverse entry. However, considering the confidential record which no doubt forms the important part of the record to be considered, we find that non-communication of 'Average' remarks in many years will unfortunately not be held to assist the case of the applicant in view of the principles enunciated by the Hon'ble Supreme Court in the matter of Baikuntha Das (supra). Thus, the judgment in S.Ramchandra Raju's case does not help the applicant. We have gone

through the cases of B.B.L. Agarwal (supra) and Madan Mohan Choudhary (supra) relied upon by the applicant. We are not convinced that these cases help the case of the applicant.

18. In the case of Sonam Lama (supra) it has been decided, inter alia, that the availability of better talent in the department is an extraneous consideration for compulsorily retiring any official and cannot be a ground taken. It does not mean that the incumbent has become a dead wood. Now this argument was sought to be taken by the learned counsel by citing that only dead wood can be removed and that the applicant had not become dead wood merely by classifying as 'Average'. As stated there is no definition of dead wood either in rules or in judicial pronouncements and the basic principles enunciated in Baikuntha Das's (supra) case would be better guidance on this regarding the unsuitability of an officer for continuance in service beyond 50 years of age. Suffice to say, this is not a case where retirement is sought to be made because better talent is available in the department. Hence, the case of Sonam Lama (supra) also cannot assist the applicant.

19. The learned counsel for the respondents had also depended on the law settled in the matter of M.E.Reddy (supra) and that in the matter of H.G.Venkatachaliah Vs. Union of India & others (1998 SCC (L&S) 152). M.E.Reddy's case also offers support to the case of the respondents. In H.G.Venkatachaliah's case (supra) it is

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held that an adverse remark although preceded by a promotion constituted material on the basis of which opinion could be formed to compulsorily retire the employee concerned in public interest. It is also held that a solitary adverse remark can be considered as a basis (for action regarding compulsory retirement) depending on the facts of the case. The ratio of these two judgements above, we find, well and truly help the case of the respondents before us.

20. On an overall consideration of the facts of the case, in the background of the case law cited, we are not persuaded to the view that the order of compulsory retirement made in respect of the applicant is either bad in law or is unjust vis-a-vis the confidential record produced before us or is in any manner perverse. We are especially guided by the principles enunciated in the case of Baikuntha Das (supra) and the case of H.G.Venkatachaliah (supra) discussed above.

21. In the circumstances, we are not convinced that there is any case for interference in the matter. The OA is therefore dismissed. No order as to costs.

S.L. Jain
(S.L.Jain)
Member(J)

B.N. Bahadur

(B.N.Bahadur)
Member (A)