

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 1054/1997

Dated this Friday, the 19/10 day of October, 2001.

Jagdish Prasad Srivastava Applicant.

Shri G.S.Walia Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri S.C.Dhawan Advocate for the
Respondents.

CORAM : HON'BLE SHRI S.L.JAIN, MEMBER (J)
HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

(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.	Yes

V.K.Majotra
(V.K.Majotra)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. NO. 1054/1997

This the 19th day of October, 2001.

HON'BLE SHRI S.L.JAIN, MEMBER (J)

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Jagdish Prasad Srivastava,
Assistant Controller of Stores
under C.W.M.(RSK), Gwalior,
Madhya pradesh,
presently residing at
107, Hata Pyarelal Nagar,
Jhansi, PIN-284003.

... Applicant

(By Shri G.S.Walia, Advocate)

-versus-

1. Union of India through
Secretary, Railway Board,
Rail Bhawan, New Delhi-110001.

2. General Manager,
Central Railway,
Headquarters Office, Mumbai CST,
Mumbai-400001. ... Respondents

(By Shri S.C.Dhawan, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

The applicant has assailed order dated 19.11.1997 (Ex.A) whereby he is sought to be prematurely retired under rule 1802(a) of the Indian Railway Establishment Code, Volume-II. The applicant was functioning as Assistant Controller of Stores, Group 'B' at the time the aforesaid order was passed. The applicant has sought quashing and setting aside of the aforesaid order with consequential benefits.

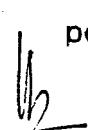
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2. The learned counsel of the applicant Shri G.S.Walia has basically raised two issues in the present matter - (1) that the impugned order has not been passed by the appointing authority, i.e., the General Manager and that it has been passed against the provisions of the statutory rule 1802(a); and (2) that while the objective of compulsory retirement under the provisions of rule 1802(a) is to weed out the dead wood when an employee has outlived his utility, the applicant's meritorious and efficient service of thirty years has not been taken into account and the impugned order has been passed without sufficient material being there against the applicant.

3. The learned counsel has relied on the following :

- (1) **Purtabpur Company Ltd. v. Cane Commissioner of Bihar & Ors.**, AIR 1970 SC 1896;
- (2) **Madan Mohan Choudhary v. State of Bihar & Ors.**, 1999 SCC (L&S) 700; and
- (3) **Sukhdeo v. Commissioner of Amravati & Anr.**, 1996 (2) AISLJ 3.
- (4) **P.M.Abdul Khader v. Union of India & Ors.**, [1990] 14 ATC 619.

In the first case where the Central Government had delegated its powers to the State Government as well as to the Cane Commissioner, Bihar, in the matter of exercise of power under clause 6(1), the orders were in fact made by



the Chief Minister and merely carried out by the Cane Commissioner, it was held the power exercisable by the Cane Commissioner was a statutory power which he alone could have exercised. It was further held that while exercising that power he could not abdicate his responsibility in favour of anyone, not even in favour of the Chief Minister. The learned counsel contended that in the present case, the appointing authority of the applicant is the General Manager, while the impugned order has been passed by the Railway Board, and that even though the Railway Board is the higher authority than the General Manager - the appointing authority - the power under rule 1802(a) could not have been exercised by the Railway Board.

4. Relying on Sampuran Singh v. State of Punjab, AIR 1982 SC 1407, the learned counsel of the respondents, Shri S.C.Dhawan, stated that even though the appointing authority of the applicant is the General Manager, the orders of compulsory retirement of the applicant could have been passed by the superior authority, i.e., the Railway Board. In the cited case sanction to prosecute a State Government official under the provisions of Prevention of Corruption Act was accorded by the Chief Minister though his appointing authority was the Chief Engineer. It was held that Article 311 (1) of the Constitution enjoins that no person who is a member of a civil service of the Union or an all India service or a civil service of a State shall be dismissed or removed by an authority subordinate to that

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by which he was appointed. The Chief Minister concerned is not inferior or subordinate to the Chief Engineer and, therefore, the power could be exercised by him. The facts of the present case are distinguishable. The order of compulsory retirement in the present case is not an order of punishment. The dismissal or removal discussed in the matter of Sampuran Singh (supra) is by way of punishment and not compulsory retirement as contemplated under the provisions of FR 56 or, as in the present case, rule 1802(a). The ratio in the matter of Sampuran Singh (supra) is not applicable to the facts of the present case where the appointing authority has been specifically vested with powers under rule 1802(a) to consider and decide compulsory retirement of a Group 'A' or Group 'B' official in public interest.

5. The learned counsel for the respondents relied on Schedule-III, Item No.2 of Railway Servants (Discipline & Appeal) Rules, 1968 and argued that the Railway Board has full powers - concurrent powers - with General Manager in respect of compulsory retirement. We are unable to subscribe to this view as the compulsory retirement is not imposed as penalty. Hence, the said Rules have no application.

6. The learned counsel of the respondents also drew our attention to a communication dated 8.6.1969 and another memo dated 12.12.1969 (Ex. R-I collectively) relating to

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the criteria and procedure to be followed regarding premature retirement of railway servants. It is provided therein that the committee for the purpose of reviewing the cases of railway servants in Group 'A' and Group 'B' for purposes of their retirement on attaining the age of 50 years has to be constituted in the Railway Board and the results of the review conducted by them are sent to the appointing authority who would pass final orders. The learned counsel stated that when the review committee is constituted in the Railway Board, the recommendations of the review committee cannot be submitted to the General Manager, though he is the appointing authority of the applicant, he being a lower authority.

7. It is an undisputed fact that the applicant's appointing authority is the General Manager and not the Railway Board. Rule 1802(a) ibid reads as follows :

"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 3 months in writing or 3 months pay and allowances in lieu of such notice -

- i) if he is in Group 'A' or Group 'B' service or post or in Group 'C' service or post in a substantive capacity, but officiating in a Group 'A' or Group 'B' service or post 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.

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Provided that a railway servant who is in Group 'C' post or service in a substantive capacity, but holding a Group 'A' or Group 'B' post or service in an officiating capacity, shall, in case it is decided to retire him from the Group 'A' or Group 'B' post or service in the public interest, be allowed on his request in writing to continue in service in the Group 'C' post or service which he holds in a substantive capacity."

8. It has been held in P.M.Abdul Khader (supra) that an authority which has been given a specific statutory power can exercise that power itself and no authority higher or lower, unless concurrently given similar powers, can do that. No other authority which does not enjoy that power can exercise that power directly or constructively merely on the ground that it is superior in status to the statutory authority.

9. the learned counsel of the respondents stated that if two authorities have concurrent power, either authority can exercise such powers. In the present case, we find that the Railway Board and the General Manager, who is the appointing authority, do not have concurrent powers under rule 1802(a) ibid. The applicant has been appointed as Group 'B' official by the General Manager and the provisions of rule 1802(a) specifically empower the appointing authority to retire a railway servant in public interest. Neither the Railway Ministry nor the Railway Board have been designated as appointing authority in the case of the applicant. We are not convinced by the argument advanced by the learned counsel of the respondents

that the review committee constituted in the Railway Board could not submit its recommendations to the General Manager for retiring the applicant under rule 1802(a). It is immaterial that the review committee has been constituted in the Railway Board. The review committee has been allocated the function of reviewing the cases of Group 'A' and Group 'B' railway officials for purposes of retirement under the provisions of rule 1802(a), but the powers to pass final orders specifically vest with the appointing authority in terms of the said rule. The review committee irrespective of the fact of its being in the higher office, has to furnish recommendations under the provisions of rule 1802(a) to the appointing authority of Group 'A' and Group 'B' officials, who is the General Manager in the instant case. The status of the review committee would not provide any justification to any higher authority to the appointing authority, be it the Ministry or the Railway Board, for retiring a Group 'A' or Group 'B' official in public interest in terms of rule 1802(a). Usurpation of powers of the General Manager, the appointing authority of the applicant, by the Railway Board is violative of the provisions of rule 1802(a) and hence illegal. The impugned order of compulsory retirement of the applicant under rule 1802(a) is vitiated on the above ground alone.

10. Both sides have put forward arguments in respect of the material on the basis of which the impugned order

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has been passed. But, in our considered view, it is not necessary to adjudicate upon the same in the present case as the case can be decided on the issue of competence of the authority who passed the impugned order.

11. Having regard to the reasons recorded and discussion made above, we are of the view that as the impugned order has not been passed by the appointing authority in terms of rule 1802(a) ibid, it is vitiated ab initio. The OA is accordingly allowed. The order dated 19.11.1997 whereby the applicant is sought to be compulsorily retired is quashed and set aside and the respondents are directed to reinstate the applicant in service forthwith and accord all consequential benefits. No costs.

V.K.Majotra

(V.K.Majotra)
Member (A)

BSJM /

(S.L.Jain)
Member (J)