

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.1164/92

Date of order: 5.1.1996

Chouthmal Arya : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.K.L.Thawani : Counsel for applicant

Mr.U.D.Sharma : Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.GOPAL KRISHNA, VICE CHAIRMAN.

Applicant Shri Chouthmal Arya in this application under Sec.19 of the Administrative Tribunals Act, 1985, has called in question the order of compulsory retirement Annex. Al dated 4.7.1992 and prayed that the same may be quashed as being arbitrary as also for a direction to the respondents to reinstate him in service and treat him as having continued in service as if the impugned orders were never passed.

2. We have heard the learned counsel for the parties and have carefully perused the records.

3. The applicant's case is that he was appointed as Postal Clerk on 4.7.1962. He was promoted to Lower Selection Grade in 1974. On being recommended by the DPC, the applicant earned his promotion to Higher Scale of pay i.e. Rs.1600-2660 w.e.f. 30.9.1991. However, he was compulsorily retired from service under Rule 48(1)(b) of the CCS(Pension) Rules, 1972, vide the impugned order dated 4.7.92. He made a representation against the same. The grounds on which he has challenged the order of compulsory retirement are:

(i) that his case was not reviewed 6 months in advance before completing 30 years of service,

ii) that the Review Committee and the Representation Committee were not constituted 6 months in advance and that,

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iii) the Review Committee failed to consider the provisions of para II(3)(c) of the instructions regarding premature retirement issued on 5.1.1978 by the Govt. of India, Deptt. of Personnel.

4. On the contrary, the respondents have stated that the applicant was promoted to HS Gr.II w.e.f. 1.10.91 under the

Biennial Cadre Review Scheme on completion of 26 years of service and the aforesaid promotion was accorded to him on the basis of seniority on completion of the aforesaid period of service. His case was reviewed by the Review Committee on 6.3.92 on the basis of his overall record of service and the Review Committee having found the applicant unfit for retention in service in public interest beyond 30 years of qualifying service, recommended his premature retirement. The appointing authority, therefore, issued the order impugned by the applicant. It has also stated by the respondents that the applicant was about to complete 30 years of service on 3.7.92 and his case was required to be reviewed during the quarter from January 92 to March 92 and this exercise was undertaken on 6.3.93. The Review Committee while assessing the applicant's record of service had considered the provisions contained in Para II (3)(c) of the instructions dated 5.1.78 as aforesaid. Since the service record of the applicant was full of adverse entries and the applicant was penalised for his lapses several times, the appointing authority on the recommendations of the Review Committee was perfectly justified in passing the impugned order. It has also been stated by the respondents that the applicant's representation was also considered by the Representation Committee and it was rejected after taking into account the overall record of his service and the rejection has

~~been approved by the Secretary, Deptt. of Posts.~~

5. The learned counsel for the applicant has strenuously argued that the applicant was promoted to HS II w.e.f. 1.10.91 on completion of 26 years of satisfactory service in terms of the instructions contained in Biennial Cadre Review Scheme in the Postal Department and he should not have been compulsorily retired. He further relied on (1992) 21 ATC 649 Baikuntha Nath Das & Anr. Vs. Chief District Medical Officer, Baripada & Anr. in which their lordships of the Hon'ble Supreme Court held as follows:

"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~~ 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 30 to 32 above."

He also relied on AIR 1995 SC 111, S.Pamachandra Raju Vs. State of Orissa in which their lordships of the Supreme Court observed that confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision making. It has also been observed that the appropriate authority, not the court, makes the decision, but even so, a caveat is necessary to avoid misuse. An order of compulsory retirement may be interfered with if the order is passed malafidely or if it is based on ~~no~~ evidence or if it is arbitrary. There is no averment of malafides against any authorities. We have carefully considered the service record of the applicant including his annual confidential reports. The applicant's service record is full of adverse entries. He was penalised many times for his lapses. The overall assessment of his service record indicates that the opinion of the Review Committee was based on objective considerations and by no stretch of reasoning it can be said ^{that} it was based on any other consideration. The contention of the applicant is that the adverse entries had lost much of their sting due to his promotions in 1974 and in 1991. The promotion of the applicant

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to LSG in 1974 was based on seniority and the promotion accorded to the applicant in 1991 was also based on his length of service and seniority and since it was not based on selection or on merit, the applicant cannot take any advantage of the ratio laid down in the case of Baikuntha Nath Das's case cited supra. It was held in the aforesaid case that if the government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so if promotion is based on merit (selection) and not upon seniority. However, it is not that the previous service record loses all its value for making an overall assessment for the purpose of deciding whether the applicant should be retained in service or he should be retired prematurely. The contention of the applicant that the representation made by the applicant to the Representation Committee was not decided through a speaking order is negatived by the observation of the Hon'ble Supreme Court in the case of Union of India & Ors Vs. Dular Dutt 1993 (4) SLF 387 wherein it was laid down as follows:

"6. The Central Administrative Tribunal by the impugned judgment dated 29th May, 1992 allowed the application of the respondent holding that "the circumstances under which the impugned order was passed have been brought out at paras 33, 34 and 35 of this judgment. It is abundantly clear from a perusal of these paragraphs that the high level review committee headed by the Chairman Railway Board unanimously recommended the retention of the applicant, firstly because his performance record had been quite good and secondly, because there was no proven vigilance case leading to punishment so far and the committee was of the opinion that the outcome of the more serious cases now pending against him should be awaited. This decision showed out application of mind by Review Committee which obviously, felt that the disciplinary proceedings started against the applicant from the vigilance angle should first be concluded before any action was taken. The

action was taken. The competent authority did not agree with the recommendation of the Review Committee for the retention of the applicant. He was certainly entitled to do so but in arriving at any contrary decision, he should have recorded a speaking order indicating the reasons of his own opinion. In the departmental file contains only single sentence recorded by the competent authority viz. 'he should be removed from service forthwith' we have no hesitation in holding that the decision of the competent authority was arbitrary and that it cannot be sustained."

In this case, the Review Committee had recommended the compulsory retirement of the applicant in public interest after a thorough examination of his entire service record and the impugned order cannot be faulted and we cannot examine for ourselves the entire service record afresh and substitute our own findings for that of the Review Committee. The last contention of the applicant is that since Shri A.K.Gupta, Director Postal Services, was a Member of the Review Committee and he had accorded promotion to the applicant to HS Gr.II, it does not stand reason that he should not have been a member of a Committee which did not find the applicant fit for retention in service beyond the age of 55 years/30 years qualifying service. No such averment has been made by the applicant in his application. This contention is absolutely baseless for the reason that the order dated 24.3.92 by which the applicant was promoted to the higher scale of pay has been passed by Shri K.L. Aseri, Asstt.Post Master General and not by the Director of Postal Services. The power of retiring the applicant prematurely in public interest has been properly exercised and the impugned order can neither be termed as arbitrary nor malafide.

CKN/MS 7. We do not find any merit in this application and it is

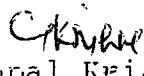
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hereby dismissed with no order as to costs.


(O.P. Sharma)

Member (Adm.)


(Gopal Krishna)

Vice Chairman.