

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

MONDAY THE TWENTY FOURTH DAY OF JULY  
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

: PRESENT :

THE HONOURABLE MR. B. N. TATA SIMHA : VICE-CHAIRMAN  
AND  
THE HONOURABLE MR. D. SURYA RAO : MEMBER (JUDL)  
AND  
THE HONOURABLE MR. D. K. CHAKRAVORTY : MEMBER (ADMN)  
AND  
THE HONOURABLE MR. J. NARASIMHA MURTHY : MEMBER (JUDL)

ORIGINAL APPLICATION. 542 OF 1987.

BETWEEN:-

Mr. Abdus Sami

...Applicants

AND

- 1) Union of India represented by its  
Secretary, Ministry of Railways,  
Rail Bhawan, New Delhi.
- 2) Railway Board represented by its  
Joint Secretary (E), Rail Bhawan,  
New Delhi
- 3) General Manager, South Central Railway,  
Rai Bhavan, Secunderabad.
- 4) Chief Personnel Officer, South Central Railway,  
Rai Bhavan, Secunderabad.

} ... Respondents

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The applicant herein has filed this Application questioning the Memo. No. P/SC/227/W/89 dated 26-8-87 whereby he was informed that the President had rejected his representation questioning the order of his premature retirement. The applicant, in this Application has also questioned the order of the CPO, SCR Secunderabad rejecting his representation No. P/SC/227/W/89 dated 24-5-1987 for review of his case.

2. The case of the applicant is that he joined the railways as Assistant Engineer on 5-1-1963. He was promoted to officiate in the Junior Administrative Grade in the IRSE in December 1983. Was posted as Senior Executive Assistant to Divisional Manager, Secunderabad in January 1984 and joined the said post on 31-1-84. This was on adhoc basis. <sup>He</sup> States that his promotion to the Junior Administrative Grade is from Senior Scale Officers of IRSE on the basis of merit and ability after the review of annual confidential reports. It is, therefore, clear that the applicant's promotion was after verification of his annual CRs which established his merit. On 24-11-84, the applicant was transferred to Vijayawada. He stated that he was orally informed by the Chief Engineer Shri Balasubrahmanyam that his transfer was being effected to avoid his annual confidential report being spoiled by the Divisional Railway Manager, Secunderbad

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Shri M.V.Srinivasan. As he fell sick, he could not join at Vijayawada till June 1985. After joining duty at Vijayawada, he again fell sick in August 1985 and continued to be on sick list till November 1985. After his discharge from the sick list, while awaiting posting orders, the CPO showed him an adverse entry made by Shri M.V. Srinivasan for the year 1984-85. He was, however, not allowed to take an extract of the same. He signed the CR recording his protest. During the period from 31-1-1984 to November 84, when he worked under Sri Srinivasan, he was never informed about his shortcomings. He reliably understand that the adverse entry is the result of the representation made by him for retention at Secunderabad due to his mother's sickness. The applicant understands that his annual CR for 1985-86 was good. He also expects that his annual CR for 1986-87 would be good. He stated that he was requested to go on leave for one month from 20th April to 22nd May, 1987 to accommodate one Mr.Suryanarayanaiah. This was at the instance of his higher officers to help his colleague. The applicant was sought to be prematurely retired by an order No.E(o)1-86/SR-10/27 dated 21-4-87 by the Joint Secretary (E), Railway Board stating that the President, in exercise of powers conferred under Rule 2046(h) of the Indian Railways Establishment Code, Volume-II, retires the applicant with immediate effect. He was informed that he would be paid a sum equivalent to his pay and allowances for a period

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of three months calculated at the same rate at which he was drawing his pay before his retirement in lieu of notice. The applicant states that action should have been taken before he attained the age of 50 years and taking action after he attained 50 years for premature retirement does not arise. Since he was promoted on 23-3-84 to the Junior Administrative Grade, it would mean that his confidential reports for the previous years were good. Subsequent to 1984, for the period ending March 1985, the DRM recorded an adverse entry which was not communicated but was shown to him. This was biased and arbitrary. The annual Confidential Reports for the subsequent years of 1985-86 and 1986-87 were good. Contended that his premature retirement is ordered only as a punishment since he has sought retention at Secunderabad. Further stated that premature retirement order is opposed to the guidelines issued by the Railway Board and communicated by the DRM's Office, Vijayawada in B/P.Con.579/P.Vol.II dated 17-2-1985. The applicant also filed C.A. 339/87 questioning the order of his premature retirement. The Bench directed the applicant to submit a representation to the authorities within a week from the date of receipt of the order of this Tribunal and directed the respondents to dispose of the same in accordance with the procedure prescribed within a period of 2 months.

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The Tribunal also directed that the petitioner should be continued in service pending disposal of the representation of the applicant. The applicant submitted a representation within a week thereafter i.e. on 11-5-87 as directed by this Tribunal. He has raised a question that his case should have been considered six months earlier to 12-5-85 on which date he ~~was~~ <sup>has</sup> attained the age of 50 years and that taking up of his case after two years later in 1987 is only a consequence of prejudice created by the adverse entry recorded by Shri Srinivasan. The representation filed pursuant to the order of the Tribunal in OA 339/87 was disposed of on 26-8-87, after the period of two months prescribed by the Tribunal. The order is also not a speaking order and ~~was~~ <sup>has</sup> not considered on the points raised by the applicant. Further stated that after remand by the Tribunal, the order terminating applicant's services with immediate effect is illegal as no three month's notice has been given.

3. On behalf of the Respondents, a counter has been filed stating that the decision to prematurely retire the applicant was taken in public interest after taking into consideration all relevant circumstances. Further stated that the retirement order issued on 21-4-87 was sought to be served on the applicant personally but could not be contacted at the residence. Hence the order was served by registered post on 6-5-87 alongwith a cheque representing

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three months pay and allowance and the same was received by the applicant on 15-5-87. Earlier to that, the applicant has moved the Tribunal by filing an application on 8-5-87. In the said Application, the office order No.E(O)I-86/SR-10/25 dated 15-4-87 was questioned. <sup>11-18</sup> He stated that this order was not an order relating to the applicant. The order bearing that number was an order prematurely retiring one Shri Apparao, Divisional Engineer of S.C.Railway. It is alleged that the applicant without receiving the order of premature retirement relating to him, but procuring a copy of the order relating to Shri Apparao, and interpolated his name and designation therein in lieu of Shri Apparao's name and designation. The Tribunal was thus, misled by the applicant that the impugned order was a true copy of the order communicated to him. Taking cognizance of the alleged true copy of the order of premature retirement, this Tribunal <sup>disposed of the</sup> ~~is~~ O.A. at the admission stage <sup>an</sup> with a direction that the applicant should submit a representation to the authorities against the impugned order within a week and such representation should be disposed of by the authorities within two months. The Tribunal also directed that the applicant should be continued in service. Thereafter, the applicant returned the cheque alongwith his representation while making a reference to the order of the Tribunal. It is contended that the applicant challenged

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a non-existent order and got a direction from this Tribunal. Thereafter, however, the applicant's representation was considered and the same was rejected and the factum of rejection was communicated to him by the CPO, SCR, Secunderabad through letter dated 26-8-87. It is denied that the adverse entry in the CR for 1984-85 was recorded because of the representation made by the applicant to post him at Secunderabad instead of Vijayawada. The adverse entry was shown to the applicant as per the rules and he acknowledged the same in token of noting the same, on 5-12-85. He did not prefer any representation to the higher authority against the said remark. It is denied that the CRs for the years 1985-86 and 1986-87 are good. It is denied that the applicant was asked to go on leave from 20th April to 22nd May, 1987 to accommodate Mr. Suryanarayanaayya. Stated that there is no bar <sup>to</sup> taking action under Rule 2046(H) at any time after a gazetted railway servant attained the age of 50 years. The rule does not permit a decision being taken in advance as contended by the applicant. It is stated that in <sup>es</sup> passing <sup>the</sup> impugned order the record of service of the applicant as disclosed by the annual CRs upto 1985-86 have been taken into consideration, his overall performance during the preceding five years have also been taken into account and he was found to be below the marks not deserving retention in service, hence the impugned order was passed. Contended that under Rule 2046(H), a

decision can be taken on an assessment of overall performance and suitability of an employee and it is not necessary that premature retirement should be only because of adverse remarks. It is denied that the order of premature retirement was ordered to punish the applicant for not joining duty at Vijayawada. Finally the rejection of the applicant's representation was conveyed by the Railway Board by letter dated 14-8-87 whereby the decision of the President was conveyed to the applicant on 26-8-87. All matters raised by the applicant have been considered by the Members of the Railway Board. Merely because there was a few days delay in communicating the order, which is for administrative reasons, cannot be said that the order of the Tribunal has not been complied with. In regard to the payment of three months pay and allowances, it is contended that a cheque was received by the applicant alongwith the original order dated 21-4-87, on 15-5-87 but the same was returned. The fact that the applicant was continued in service was only pursuant to the order of the Tribunal. He has, however, continued for more than three months from the date of receipt of the impugned order and, therefore, cannot contend a violation of requirement of Rule 2046(H).

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4. We heard the arguments of Shri Jogayya Sharma, Advocate on behalf of the applicant and of Shri P. Venkatrama Reddy, Standing Counsel for the Railways. The first contention of Shri Jogayya Sharma is that under Rule 2046(H) which corresponds to Fundamental Rule 56(J), the case of the applicant for premature retirement should have been taken up immediately prior to his attaining the age of 50 years and not long thereafter. Rule 2046(H) does not specifically say when action for premature retirement should be taken up. It only provides that it should be taken up after the age of 50 years. No doubt the instructions provide for a review before attaining the age of 50 years, but ~~unless~~ such a review is not done, it does not necessarily follow that review cannot be done after 50 years. It is quite possible that a person who is found fit to continue in service just prior to his attaining the age of 50 years, has deteriorated in the course of <sup>the</sup> next one or two years. Since the rule does not prohibit consideration, <sup>after an employee has attained the age of 50 years</sup> it is valid that the impugned order dated 21-4-87 served on the applicant on 15-5-87 is a valid order. The next contention is that the applicant was promoted in the year 1984 <sup>which</sup> that adverse entries prior to that should not be looked into and only entries after 1984 should be considered.

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It is admitted that there is an adverse entry in the CR for 1984-85 but was not communicated to him and, therefore, it may not be looked into. In so far as the CRs for 1985-86 and 1986-87 are concerned, the applicant is of the opinion that they are good since no adverse remarks have been communicated. The contention that the applicant was not communicated the adverse remarks is not correct. The original record has been produced. The confidential reports for the year 1-4-84 to 31-3-85 discloses that the Reporting Officer reported that his work is not satisfactory, he lacks initiative even for limited work, that he puts up only, routine papers, when asked, his capacity to take quick and effective action is reported to be doubtful. Further found that the reporting officer also found that he avoids participation in meetings and discussions and despite efforts to bring him up pointing out his deficiencies, there is no improvement. It is also <sup>observed</sup> found both by the reporting officer and by the Chief Engineer that the applicant would not hesitate to bring political influence to achieve his ends. The Chief Engineer also reported that on his first promotion he was posted to Vijayawada which he got changed by applying political pressure. <sup>unofficially</sup> Once again he was carried out on transfer to Vijayawada but was on sick list with a private medical certificate. These remarks were noted by the

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applicant on 5-12-85 and he stated that a representation would follow but no such representation was ever made. It is, therefore, not open to him to contend that the adverse remarks were not communicated to him. Again in the next year's report namely 1-4-85 to 31-3-86, there was nothing adverse. However, it discloses that he was sick for most part of the year and that he has been trying to avoid joining at Vijayawada. The Reporting Officer reported that with his very little initiative, his continued usefulness to the Department is a matter of doubt. Earlier to these two years, the reports for the years 1-4-83 to 31-3-84 and 1-4-82 to 31-3-83 show that his work was classified as good. It is on the basis of these latter two reports he has been promoted to the Junior Administrative Grade in 1984. In so far as review for the purpose of retirement is concerned, the review was done considering the last five year's CRs ending with 31-3-86. The Railway Board have a system of giving marks or points and in the instant case it was decided that officers having 11 points or below not to be retained in service, officers having 11 points or more but less than 14 points would be in grey area and these officers are also to be viewed for compulsory retirement. Officers having 14 points and above are to be retained in service unless the points for last

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three annual CRs have a total of below 6 points.

Applying these guidelines, it was found that the applicant has got less than 11 points and consequently a decision was taken to retire him, as stated supra, on the basis of the last five years CRs. No doubt, the applicant got promotion in December 1983 i.e. on the basis of CRs upto 31-3-1982. Normally, the <sup>adverse</sup> ~~confi-~~ dential reports prior to promotion cannot be a ground for premature retirement. However, nothing prevents that the competent authority to make an overall assessment of his service record including the CRs for the earlier years prior to promotion. If the applicant is sought to be retired merely on the basis of adverse remarks prior to promotion ignoring the remarks subsequent to promotion which are good, then obviously the order of retirement would be bad. However, if the CRs of the subsequent years after promotion show unfitness for retention in service, obviously it would be illegal to lock into the earlier record namely prior to his promotion, to determine whether the employee should be retained in service or not. It has been held by the Supreme Court that looking into the past record of service for determining fitness or utility of an employee would not be illegal. The Supreme Court

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usefulness to department was in serious doubt. A decision taken on these considerations cannot be assailed. The applicant has sought to question the final order dated 26-8-87 on the ground of speaking order. We find from the record that full consideration has been given by the Railway Board to the every point raised by the applicant. We find that the Board considered the ACRs earned by the applicant subsequently to his promotion as Junior Administrative Grade that is after promotion, were as follows:

1984 : Average, not fit for promotion

1985 : Below average, not fit for promotion

1986 : Average, not fit for promotion.

His claim that he has good and satisfactory record was, therefore, not accepted. His claim that he has various achievements to his credit were also not accepted. His claim that his retirement should have been considered just before his attaining the age of 50 years and not thereafter was also considered and rejected holding that the review can be conducted at any time even after an officer attained the age of 50 years. The Board, therefore, recommended to the President that his representation be rejected. The applicant cannot, therefore, validly contend that his representation was not duly considered.

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5. Apart from the fact that the impugned orders dated 24-5-87 and 26-8-87 are valid and proper. We are of the view that the applicant's conduct in approaching the Tribunal earlier was not above board and he has not come with clean hands. Earlier to the filing of the present application, as stated supra, the applicant had filed O.A. 339/87. This O.A. was filed on 8-5-87 questioning the order No.E(O)I-86/SR-10/27 dated 15-4-87. The order now filed in the present application which is sought to be impugned is Order No.E(O)I-86/SR-10/27 dated 21-4-87. This order dated 21-4-87 was served on the applicant only on 15-5-87. It is admitted by the applicant that he received it on 15-5-87 alongwith a cheque for three months pay which was returned. The applicant has nowhere explained how he was able to file O.A. 339/87 on 8-5-87 when he was served with the order only on 15-5-87. It is clear therefrom that the previous order dated 15-4-87 enclosed to his Application, O.A.No.339/87 was never an order relating to the applicant's premature retirement and as averred in the counter it was an order relating to one Shri Apparao. The applicant obviously having come to know orally that he was also under premature retirement was able to obtain a copy of the order relating to Shri Apparao and substituted the operative portion therein by



interpolating his name. The contention of the Railways in this regard, is established without doubt. It is clear that the applicant even without obtaining an order of premature retirement, has somehow managed to get an order from this Tribunal and obtained a direction for reconsideration of his case by the higher authorities. In the normal circumstances, we would have taken a more serious view of the matter, but having regard to the fact that the applicant has considerably advanced in age and has retired from service that too prematurely, we do not propose to take any further action in the matter. We find no merits in the Application and the same is accordingly dismissed.

No costs.

*D. Surya Rao*

(D. SURYA RAO)  
MEMBER (J)

*D. K. Chakravorty*

(D. K. CHAKRAVORTY)  
MEMBER (A)

Dated: 24<sup>th</sup> July, 1989.

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*S. Venkay*  
DEPUTY REGISTRAR (J)  
3/9/89

To.

- 1) The Secretary, (Union of India), Ministry of Railways, Rail Bhawan, New Delhi.
- 2) The Joint Secretary (E), Railway Board, Rail Bhawan, New Delhi.
- 3) The General Manager, South Central Railway, Rail Bhavan, Secunderabad.
- 4) The Chief Personnel Officer, South Central Railway, Rail Bhavan, Secunderabad.

Conld. - - -