

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.No. 36 of 1987

Date of Order: 22-12-1989

Between:-

K.Chalamaiah.

...Applicant.

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1. Divisional Railway Manager,
South Central Railway, Vijayawada.
2. Divisional Operating Superintendent (Movement),
South central railway, Vijayawada.

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...Respondents.

FOR THE APPLICANT: Mr.G.Sriraghuram, Advocate for
Mr.V.Venkataramanaiah, Advocate
FOR THE RESPONDENTS: Mr.N.R.Devaraj, SC for Railways.

C O R A M :-

THE HON'BLE MR.D.SURYA RAO: MEMBER:(JUDL)

THE HON'BLE MR.D.K.CHAKRAVORTY:MEMBER:(ADMN.)

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ORIGINAL APPLICATION NO.36 of 1987

ORDER OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO, MEMBER(J).

The applicant herein who was working as Guard 'A' in the South Central Railway, Vijayawada Division, has filed this application questioning the order No.B/P.Con.579/VI/Optg./85-86 dated 25.3.1986 retiring him prematurely in public interest under Rule 2046 Clause h(ii) of the Railway Establishment Code, Volume-II on his having attained 55 years of age. By this notice, he was ordered to be retired within three months from the date of receipt of the order. Consequent thereto, a further order dated 24.4.1986 was passed by the Senior Divisional Personnel Officer, South Central Railway, Vijayawada directing ~~dismissing~~ the supervisory officials to ensure that the applicant is relieved from duties on 11.7.1986. It is these orders which are sought to be questioned. The applicant contends that on 17.7.1985 a charge memo was issued to him under Rule 11 of the Railway Servants (Discipline & Appeal) Rules alleging that during the ticket checking of ~~a~~ passengers ^m train No.264 ~~of~~ on Mancherial-Guntur route on 12/13.7.1985, certain ticket-less passengers were found travelling in the train and on inter^{ro}pogation they had stated that that they had paid the applicant Rs.2/- and Re.1/- respectively for allowing them to travel in the train but without issuing tickets. The applicant submitted his explanation to the charge memo on 22.7.1985 denying ^{the} charges. He was placed under suspension pending enquiry. Subsequently, on 19.9.1985 the earlier charge memo dated 17.7.1985 was cancelled and an identical charge memo was again issued to him with a modification that the intention of the applicant was to misappropriate

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the sum taken by the applicant causing loss of Rs.4/- in revenue to the Railways. An enquiry was held and the Enquiry Officer's report submitted. The 2nd respondent by proceedings dated 10.2.1986 issued orders imposing upon the applicant a penalty of reversion to the grade of Guard 'C' for a period of two years recurring with loss of seniority. The applicant states that he submitted an appeal dated 19.2.1986 against the order of punishment. Immediately there-after, by the impugned order dated 25.3.1986, the 1st respondent passed the order retiring him in public interest. The applicant states that he preferred an appeal dated 31.5.1986 to the 1st respondent both as regard to the penalty of reduction in rank as well as the order of premature retirement. The 1st respondent by an order dated 10.6.1986 rejected the appeal of the applicant on the ground that the passengers who had earlier deposed against him have turned hostile. The applicant submitted an application on 1.7.1986 to the 1st respondent to review his orders dated 10.6.1986. There was no response there to. The applicant has, therefore, filed the present application questioning the order of premature retirement.

2. On behalf of the respondents a counter has been filed stating that the order dated 10.2.1986 reverting him from the grade of Guard 'A' to Guard 'C' is the result of the disciplinary proceedings and has nothing to do with the premature retirement of the employee which was done in public interest under the provisions of Rule 2046 of the Railway Establishment Code, Volume-II. It is specifically stated in the counter that the applicant had been visited with various punishments during his service in the Railways. They are listed out as follows:-

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1. Increment was withheld for three months/NR
for detention to Train No.78 at TEL on 30.7.61.
2. Censured for detention of 2 mts. to RC 19
at GVN on 14.5.64.
3. Censured for late start of 10 mts. to LS 8
from COA on 30.12.64.
4. Pay reduced by one stage for one year for
improper supervision of shunting by his train
of TEL special at OGL resulting in derailment
of two wagons due to side collision with
vehicles on Road 6 at OGL on 2.8.74.
5. Increment was withheld for 3 months (NR)
for late start of 10 mts. to 404 at TEL on 1.11.81
due to waiting on Guard.

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It is stated that the applicant has not submitted any representation dated 31.5.1986 as claimed by him. It is further stated that the applicant is put to strict proof of his submission of representation dated 31.5.1986 against ~~his~~ premature retirement order. It is contended that in any event the representation even if made, was time barred as it was submitted beyond the period of three weeks.

3. We have heard the learned counsel for the applicant, Shri Raghuram and the learned Standing counsel for the respondents/Railways Shri N.R.Devaraj. The applicant who has been prematurely retired from service had no knowledge as to the reasons which gave rise to his premature retirement. He has presumed that the retirement was consequent on the charges framed against him for alleged bribe taking which gave rise to his reversion from the category of Guard 'A' to Guard 'C'. The counter is silent as to the reasons as to why the applicant was prematurely retired from service. It, however, mentions that the applicant was visited with various punishments during his career, the last of which was on 1.11.1981. The counter, therefore, would appear to state that the premature retirement was for the reasons that his record was not clean and he has been subjected to various punishments.

4. The main objection raised by the learned Standing counsel for the respondents is that the applicant has not made any representation against the order of premature retirement and that he has thus not availed the alternative remedy available to him in law, and, therefore, the applica^{-tion} is liable to be dismissed. It is contended that the application is not

maintainable in view of Section 20 of the Administrative Tribunals Act, 1985 which provides that the Tribunal shall not ordinarily admit ~~an~~ application unless it is satisfied that the applicant has availed all the remedies available to him under the ^{relevant} ~~Railway~~ Service Rules as to redressal of grievances. The question, therefore, which arises for determination is whether the applicant has, under the service rules, a remedy of appealing ^{or} ~~ing~~ or representing against an order of premature retirement under Rule 2046(h) of the Railway Establishment Code, Volume-II. The Railway Establishment Code does not specifically provide for a right of appeal against the order passed under Rule 2046(h). It is, however, contended by Sri Devaraj, that Rule 18(4)(a) of the Railway Servants (Discipline & Appeal) Rules provides for an appeal against any order which denies or varies to the disadvantage of an employee ~~in regard to~~ his pay, allowances, pension and other conditions of service, that since the order under Rule 2046(h) varies the condition of service namely right to continue in service upto the age of 58 years and also results in the reduction in pension, the case of the applicant would come within the purview of Rule 18(4)(a) of the Railway Servants (Discipline and Appeal) Rules. It is further contended that by the impugned order dated 25-3-1986, the applicant was specifically told that he may make a representation within three weeks from the date of service of the order. It is, therefore, contended that ~~in~~ either way, namely by virtue of Rule 18(4)(a) of the Railway Servants (Discipline & Appeal) Rules, ~~and~~ ^{in terms of} by the impugned order dated 25-3-86 the applicant has been given the right to make a representation against the said order. ^{Since he made no representation his application is liable to be dismissed in terms of} No doubt, an order under Rule 2046(h) of

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the Railway Establishment Code does effect the conditions of service and pension of the applicant. But the said order is a non-speaking order and does not indicate why the applicant is being retired prematurely. ^{law as laid down by the Supreme Court at that time} The order ^{of premature retirement} cannot be assailed on the ground that it is a non-speaking order. But the fact remains that the applicant does not know why he is being retired prior to the normal date of superannuation. He cannot postulate or state with any certainty that the order has been passed on the ground of lack of integrity or on the ground of his ^{being ineffective and not useful to the Railways.} ^{Since he does not know this} He can at best ^{only} plead and represent to the authorities that he does not know why he is being prematurely retired and ^{can} could only plead for mercy. Thus, for all purposes, the representation, if any, can at best be a mercy petition and nothing more, since he cannot assail the action of the competent authority on merits. His right to question the order in so far as merits of the case are concerned, would only be available to him by way of judicial review since at the stage of judicial review he would be entitled to peruse the records. If the remedy of the applicant is, in substance, only to make a memorial or mercy petition, then his case would come under sub-clause (3) of Section 20 of the A.T. Act 1985 which lays down that any remedy available to an employee by way of a memorial to the President or to the Governor of the State or to any other functionary will not preclude him from approaching the Tribunal unless he has elected to submit such a memorial. In the instant case, the applicant neither submitted a memorial nor he can be compelled to do so. Hence his right to judicial review cannot be denied. Assuming that the representation is not deemed to be a memorial, Section 20 lays down that

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the Tribunal shall not ordinarily admit an application unless the employee exhausted all the remedies. In a case of premature retirement, either under Rule 204⁶(h) or under FR 56(j) or analogous provisions, since ^{an} the employees ~~do not~~ know why he is being prematurely retired and since he does ^{not} know on what material or for what reason he is being retired it would be impossible to ^{represent and} question the order of premature retirement either on the ground that it is an arbitrary decision based on no material, or that the guidelines prescribed were not followed etc. It would follow that any such representation made could only be on hypothetical grounds based upon the guess of the employee. Such a remedy can never be termed an adequate alternative remedy. The bar that the Tribunal should not ordinarily admit an application would not, therefore, apply to such cases. For these reasons, we reject the contentions of the learned counsel for the Railways that the right of representation afforded to an employee should be exhausted before he approaches the Tribunal in a case governed under Rule 2046(h) of the Railway Establishment Code, Volume-II.

5. The next question is as to whether the order of premature retirement has been validly passed. It is well established that compulsory retirement under FR 56(j) or any other analogous provision does not amount to a punishment, that no stigma is involved and that neither notice need be given before passing the order of compulsory retirement nor need reasons be given as to why the competent authority has issued the said order. Public interest is the criterion for determining whether an employee is to be retired. Thus, the right of the appropriate or competent authority to retire an employee cannot be questioned if it is in public interest to do so. However, in determining whether an employee is to be retired, the authority cannot act upon collateral or extraneous material and his decision must be objective and bonafide based on relevant material.

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It cannot be a substitute for disciplinary action. The decision to retire should be on the basis of overall assessment of the service record. But no employee should be retired on grounds of ineffectiveness if his services during the preceding five years have been satisfactory. Railway servants whose integrity is doubtful could be retired irrespective of the service record. These principles have been laid down not only in the decisions rendered by the Supreme Court and the various High Courts but also in the guidelines issued by the Railways themselves, namely, as contained in Railway Board's letter No.E(P&A)I-77/RT-53 dated 15-11-79 as modified from time to time.

6. Keeping the above factors/principles in view, we have proceeded to examine whether the order of compulsory retirement can legally be sustained in the instant case. As already stated supra, the counter narrates five instances wherein punishments were imposed upon the applicant, one in the year 1961, two in the year 1964, one in the year 1974 and one in the year 1981. Four of these were before the promotion of the applicant and as such could not be relevant in determining his effectiveness or ineffectiveness. Coming to the fifth punishment, it is also more than five years ago and is not of such a serious nature as any reasonable person could come to the opinion that it would warrant premature retirement. Hence the reasons mentioned in the counter cannot be valid grounds for premature retirement of the applicant and if a decision was taken thereupon it would be arbitrary. We have called for the records to verify whether any of ^{other} the valid considerations

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had weighed with the Review Committee for prematurely retiring the applicant. We find from a perusal of the record that the applicant was not retired on the grounds mentioned in the counter but for totally different reasons namely that the applicant lacks integrity in that he was charged and found guilty in a departmental enquiry for having received amounts of Rs. 2 and Re. 1 respectively from two passengers on 12/13-7-85 and that he had been found guilty of this charge. This disciplinary enquiry had resulted in the punishment of the applicant of reversion from the post of Guard-A to Guard-C in a lower time scale of pay. This punishment had been questioned before this Tribunal in O.A.No.520/86 and the punishment had been quashed on merits by the Tribunal by an order dated 28-5-1987. In view of the setting aside of the order of punishment on merits which is the basis for compulsory retirement, it would follow that the decision ~~retire the applicant would be valid and cannot be~~ of the committee to sustained. The reasons given by the review Committee would cease to have value consequent on the ~~questioning~~ ^{setting aside} of the order of punishment. We, therefore, hold that the order of premature retirement passed upon the applicant by the first Respondent in proceedings No. B/P.Con.579/VI/Optg./85-86 dated 25-3-1986 is illegal and we accordingly quash the same. The Respondents are directed to reinstate the applicant to duty with all consequential benefits of arrears of pay and all other service benefits treating the applicant as on duty throughout. Any payments made to the applicant towards notice pay, subsistence allowance,

pension, etc. may be deducted from the amount due to the applicant and the balance due to him paid. The order of the Tribunal may be implemented within the period of two months from the date of receipt of this order.

7. The O.A. is allowed with the above direction but in the circumstances there will be no order as to costs.


(D.SURYA RAO)
MEMBER (J)


(D.K. CHAKRAVORTY)
MEMBER (A)

Dated: 22nd December, 1989.

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DEPUTY REGISTRAR (J)
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TO:

1. The Divisional Railway Manager, (Personnel Branch) south central railway, Vijayawada.
2. The Divisional operating superintendent (Movement) south central railway, Vijayawada.
3. ~~Max~~ One copy to Mr. V. Venkataramanaiah, Advocate, H.No.1-10-126, Ashoknagar, Hyderabad-500 020.
4. One copy to Mr. N.R. Devaraj, SC for Rlys., CAT, Hyderabad.
5. One spare copy.

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18/12/89