

(R.M)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD  
BENCH : AT HYDERABAD

O.A.No.356/89.

Date of Judgment 9-8-11-90

K.Rama Mohan Rao

.. Applicant

Versus

1. Union of India,  
represented by  
Secretary to Government,  
Ministry of Railways,  
Rail Bhavan,  
New Delhi.
2. Joint Secretary(E),  
Ministry of Railways,  
Railway Board,  
New Delhi.
3. General Manager,  
North East Frontier Railway,  
Maligaon,  
Guwahati (Assam) - 781001. .. Respondents

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Counsel for the Applicant : Shri S.Surya Prakash Rao

Counsel for the Respondents : Shri N.R.Devaraj,  
SC for Railways

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CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

Hon'ble Shri R.Balasubramanian : Member(Admn)

I Judgment as per Hon'ble Shri R.Balasubramanian,  
Member(Admn) I

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This application has been filed by Shri K.Rama  
Mohan Rao under section 19 of the Administrative  
Tribunals Act, 1985 against the Union of India,  
represented by Secretary to Government, Ministry of  
Railways, Rail Bhavan, New Delhi and two others.

2. The applicant joined the Railways in April, 1963  
and had in course of time risen to the level of

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Junior Administrative Grade in the Railways. In March, 1987 he was transferred from South Central Railway to North East Frontier Railway where he joined duty on 1.6.87. Within 10 days thereafter he was served with an order retiring him prematurely from service on 11.6.87. The applicant alleges that his premature retirement (he calls it compulsory retirement which is different from premature retirement) is on account of alleged misbehaviour on his part and that recourse to premature retirement on this score is violative of Rule 5(a) of the Guidelines for premature retirement. Questioning the order of premature retirement the applicant filed O.A.No.450/87 before this Bench and in its judgment dated 5.8.88 this Tribunal quashed the order of premature retirement. Accordingly, he was reinstated with effect from 14.12.88. The applicant is surprised and aggrieved that by an order dated 8.3.89 he was again retired prematurely within a period of 85 days from the date of his reinstatement. He describes this impugned order as wholly unjust, arbitrary and is by way of victimisation in colourable exercise of power. The applicant alleges that, according to Rule 2046(h) of the Indian Railway Establishment Code Vol.II, a review of the cases of employees for premature retirement should be conducted six months before attaining the age of 50 years. In such a case

a second review can be taken up only where integrity comes to be questioned. According to the applicant his case has not been reviewed six months before attaining the age of 50 years and that his integrity has not been questioned. He, therefore, feels that this premature retirement is in violation of Rule 2046(h) of the Indian Railway Establishment Code Vol.II. He states that it was only on 15.7.81 when he was 48 years old that he had been promoted to the Junior Administrative Grade and his work had not deteriorated warranting premature retirement. He, however, admits that he had earned adverse remarks for a period of three years - 1983-84, 1984-85 and 1985-86 which he attributes to malice on the part of the Chief Signal & Telecommunications Engineer (Construction) under whom he was working. As a result of his appeal to the next higher authority - the General Manager, some of the adverse remarks had been expunged while many of them still remained. It is also his contention that these adverse remarks are of a trifling nature which do not warrant premature retirement. Another ground he had raised is that as per the guidelines issued by the Railway Board on 15.11.78 before prematurely retiring an employee in exercise of the power under Rule 2046(h) on the ground of ineffectiveness his case must ~~have been~~ be considered for reversion to a lower post. He is aggrieved that this has not been done in his case

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and that he has straightway been prematurely retired. The applicant wonders whether his confidential report for a period of 5 to 10 years had been considered at all. He is also aggrieved that in spite of the fact that the General Manager, North East Frontier Railway had given ~~him~~ a favourable report <sup>about him</sup> he had still been retired prematurely. He has prayed that the proceedings of the 2nd respondent vide No. E(O) I-87/SR-10/14 dated 28.2.89 be quashed by declaring ~~it~~ <sup>them</sup> as illegal and that he be given all consequential benefits.

3. This case is contested by the respondents. It is their contention that a review can be undertaken in public interest after a person crosses the age of 50 years. In the application the applicant has contended that while he was transferred to North East Frontier Railway in public interest he could not have within a very short time been prematurely retired in public interest. The respondents contend that the considerations for transfer are quite different from the considerations for premature retirement. It is also pointed out that the application (O.A.No.450/87) filed by the applicant against the premature retirement ordered in June, 1987 <sup>was</sup> ~~is~~ only on technical grounds/that the competent authority undertook a fresh review after reinstatement and had come to the conclusion that

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the applicant should be retired prematurely in public interest. It is also contended that his performance had been so poor that the competent authority after due consideration decided to retire him prematurely in public interest. As regards the allegation that his alleged misbehaviour with the superior officers was the cause for his premature retirement, the respondents held that this is not so and that it was on the review of his performance as a whole that it was decided to retire him prematurely.

4. The applicant has filed a rejoinder in reply to the counter filed by the respondents. The statements here are ~~as~~ by way of repetition of his main contention and we do not find anything new in these.

5. We have examined the records and heard the learned counsel Shri S.Surya Prakash Rao for the applicant and Shri N.R.Devaraj for the respondents. The first question to be examined is whether the procedure adopted to retire him prematurely is proper. Rule 2046(h) of the Indian Railway Establishment Code states that:

(h) Notwithstanding anything contained in this rule, the appropriate 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 three months in writing or three months' pay and allowances in lieu of such notice.

(i) If he is in Class I or Class II service or post/ ~~xxxsubstantive capacity except~~ but officiating in a Class I or Class II post and has entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.

*/in a substantive or temporary capacity or ....6  
in a Class III post or service in a substantive capacity*

From a plain reading of this it is clear that the competent authority can review the case of premature retirement anytime after ~~attaining~~ <sup>the applicant</sup> the age of 50 years. We, therefore, do not see any substance in the contention of the applicant that having failed to undertake a review six months before attaining the age of 50 years the respondents are precluded from conducting a review anytime later except on ground of doubtful integrity. We also find that in May, 1987 the case had been completely reviewed and with the approval of the President ~~only~~ <sup>the</sup> premature retirement order of June, 1987 was issued. We have also seen from the confidential reports and other reports sent by the General Manager that the performance of the applicant left much to be desired. All the adverse entries (except the ones expunged) made against him had been duly communicated, appealed against by him and sustained by the competent authority. We also find from the Railway Board records that the decision to retire him prematurely had been taken only on grounds of his performance as seen from the annual and other confidential reports and not on alleged misbehaviour of the applicant. As per the provisions contained in the guidelines dated 15.11.78 that when an office is found to be ineffective to continue in a post, before premature retirement his fitness or otherwise to continue in a lower post should also be considered.

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We find from the Railway Board records that these guidelines had been taken note of and a conscious decision had been taken to retire him prematurely.

We do not see any illegality in such a decision.

6. The applicant had filed O.A.No.450/87. In that application this Tribunal took up only one issue viz: that he was not paid the correct amount of three months' pay and allowances in lieu of the notice.

The Bench had observed:

"Various other contentions have been raised by the learned counsel for the applicant viz: that the review was not proper in that according to the guidelines the review should have been done 6 months before the applicant reached 50 years and thereafter no review is permissible except where the integrity of an employee is in doubt, that this is not a case wherein the retirement has been ordered on the ground of lack of integrity, that the Committee ordered compulsory retirement taking into account certain adverse remarks which are trifling in nature and that since the applicant was not considered or given the option of continuing in service in a lower post the order of retirement is illegal. It would be unnecessary to go into all these questions as we have decided in favour of the applicant that the order of retirement is bad as the full amount comprising 3 months pay and allowances was not tendered in lieu of notice."

It is thus clear that the ~~dismissal~~ was only on <sup>quashing of the impugned order therein</sup> ~~the~~ <sup>other</sup> one score and the ~~other~~ merits of the case were not gone into while adjudicating in O.A.No.450/87.

The Railways decided not to go in appeal against that and ordered reinstatement and having reinstated him in accordance with the judgment dated 5.8.88 in O.A.No.450/87 they decided to review his case afresh. Accordingly, the review was again taken up in February, 1989 and the competent authority felt that it would be in public interest to retire

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the applicant prematurely. Hence the impugned order dated 28.2.89. We also find that the Railway Board had taken into consideration a D.O. letter dated 3.2.89 sent by the General Manager, North East Frontier Railway to the Member (Electrical), Railway Board forwarding a letter from the applicant. The letter ~~contains~~ <sup>tenor</sup> contains no specific recommendation although the ~~canere~~ <sup>was favourable</sup> ~~is available~~ to the applicant. It was after taking into account this letter also, that the competent authority had come to the conclusion to retire the applicant prematurely.

7. The learned counsel for the respondents had cited a Supreme Court judgment A.I.R. 1990 SC 1004. In that judgment the Hon'ble Supreme Court had observed:

"An aggrieved civil servant can challenge an order of compulsory retirement on any of the following grounds as settled by several decisions of this Court, (i) that the requisite opinion has not been formed; or (ii) that the decision is based on collateral grounds; or (iii) that it is an arbitrary decision."

We find that in the instant case the requisite opinion has been formed. It is also not arbitrary but duly considered and as a result of due consideration of the overall performance of the applicant, particularly during the 5 years preceding the decision. It is ~~also~~ <sup>also</sup> in accordance with the guidelines and the rules on the subject. In the case cited, the Hon'ble Supreme Court had dismissed the appeal against premature retirement. Since we do not find any illegality

and since the Government is keen to chop off the dead wood without attaching any stigma to the affected parties we feel that the premature retirement of the applicant is quite in order. We, therefore, dismiss the application with no order as to costs.

*MS*  
( J. Narasimha Murthy )  
Member(Judl).

*R.Balasubramanian*  
( R. Balasubramanian )  
Member(Admn).

Dated 28<sup>th</sup> November 90

*S. Venkateswaran*  
Deputy Registrar (Judl)

*29-11-90*

To

1. The Secretary to Govt.,  
Union of India,  
Ministry of Railways,  
Rail Bhavan, New Delhi.
2. The Joint Secretary (E) Ministry of Railways,  
Railway Board, New Delhi
3. The General Manager, North East Frontier Railway  
Maligaon, Guwahati (Assam) 781 001.
4. One copy to Mr. S. Surya Prakash Rao, Advocate  
1-9-485/15/B Vidyanaagar, Hyderabad.
5. One copy to Mr. N. R. Devraj, SC for Rlys, CAT. Hyd Bench.
6. One copy to Hon'ble Mr. R. Balasubramanian, M(A) CAT. Hyd.
7. One copy to Hon'ble Mr. J. Narasimha Murty, M(J) CAT. Hyd.
8. One spare copy.

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