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# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 235/91.

Date of Decision :

-T.A.Ne--

K.Krishna Murthy

Petitioner.

Shri G.Ramachandra Rao

Advocate for the  
petitioner (s)

Versus

Union of India, Rep. by the Secy..(Estt),  
Min. of Railways, Railway Board, Rail Bhavan,

Respondent.

New Delhi-110001  
Shri D.Gopal Rao, SC for Railways

Advocate for the  
Respondent (s)

**CORAM :**

THE HON'BLE MR. R.Balasubramanian : Member(A)

THE HON'BLE MR. T.Chandrasekhar Reddy : Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*,
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?
5. Remarks of Vice Chairman on columns 1, 2, 4  
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HRBS  
M(A).

T.C.R.  
HTCR  
M(J).

(41)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A.No.235/91.

Date of Judgment 24.92.

K.Krishna Murthy

.. Applicant

Vs.

Union of India, Rep. by  
The Secy., (Estt),  
Min. of Railways,  
Railway Board,  
Rail Bhavan,  
New Delhi-110001.

.. Respondent

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Counsel for the Applicant : Shri G.Ramachandra Rao

Counsel for the Respondent : Shri D.Gopal Rao, SC for Rlys.

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CORAM:

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

Hon'ble Shri T.Chandrasekhar Reddy : Member(J)

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

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This application has been filed by Shri K.Krishna Murthy under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, Rep. by the Secy., (Estt), Min. of Railways, Railway Board, Rail Bhavan, New Delhi-110001 with a prayer to quash the impugned order No.E(OI)-89/SR/10/58 dt. 25.7.90 and to direct the respondent to reinstate the applicant in service with full back salaries and attendant benefits.

2. The applicant joined the Railways as a temporary Asst. Engineer in September, 1962 and has in due course risen to the Junior Administrative Grade (J.A.G. for short). A charge memo dt. 29.10.87 was issued to the applicant by the General Manager, S.C.Rly., for certain alleged irregularities on his part. The applicant has challenged these proceedings in O.A.No.196/91 which is pending.

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3. The applicant was denied regular promotion to the J.A.G. and he has challenged this action of the Railways in O.A.No.264/90.

4. While matters stood thus, the respondent issued the impugned proceedings dt. 25.7.90 in exercise of the powers conferred in Rule 1802(a) of the Indian Railway Establishment Code Vol.II (Code for short) prematurely retiring the applicant from service on the ground that he has attained the age of 50 years. He has also been paid the required equivalent of 3 months pay and allowances in lieu of the notice. The applicant had represented to the respondent against the premature retirement and in the absence of any response from the respondent he has approached this Tribunal with the present O.A. The 4 main grounds on which he assails the action of the respondent are:

(a) That the premature punishment order was passed on extraneous grounds obviously as a measure of punishment on the basis of the charge memo dt. 29.10.87.

(b) That the impugned order of premature retirement is not in public interest.

(c) That the record of service of the applicant <sup>during</sup> 5 years preceding the date of the impugned order is an excellent one.

(d) That he attained the age of 50 years on 7.1.87 itself and ~~his case~~ <sup>he cannot be retired</sup> should have been reviewed by the competent authority according to the rules at the appropriate time and when he had been continued in service for more than 3½ years after he attained the age of 50 years ~~he cannot be retired~~

Under Rule 1802(a) referred to above for extraneous reasons.

5. The respondents have filed a counter affidavit and oppose the application. It is their case that the decision taken to retire him prematurely was an independent one not connected in any way with the disciplinary proceedings still <sup>in progress</sup> and the charge-sheet was not taken into account.

On the other hand, what was taken into account

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N.B.

before deciding his premature retirement was the entire service history of the applicant containing several major and minor penalties in addition to warnings. It is also pointed out that the disciplinary action which they had initiated would take its own course since it has not either affected/been affected by this decision to prematurely retire him. The respondents have come to the conclusion that it would not be in public interest to continue him in service and hence they have decided to retire him prematurely. It is also argued that they can do so any time after the applicant attains the age of 50 years.

6. The applicant has filed a rejoinder wherein he only repeats what he has stated in the main application.

7. We have given our careful thought to this case of premature retirement and heard the rival sides. Among the 4 grounds referred to in para 4 above, we shall take up item (d) first. It is virtually the case of the applicant that once the respondents have failed to review his case for continuance in service immediately after he attained the age of 50 years they have no right to consider his case at a later stage after 3½ years. In this context, we reproduce para 1802(a) of the Indian Railway Establishment Code Vol.II 1987 Edition (This corresponds to F.R.56(j) of F.R. & S.R.).

"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 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 fifty five years."

From a plain reading of this rule it is clear that the Government has a right to review the case at any time

after an official reaches the age of 50 years. May be that they had conducted a review immediately after a person attains the age of 50 years and not arrived at a conclusion or may be that they had not conducted a review at all after a person had attained the age of 50 years. The retirement under this rule is not a punishment and does not carry a stigma. The main purpose of this is to weed out the dead wood. On the other hand, to provide a certain sense of security to the official as such a course cannot be taken by the respondents before one crosses the age of 50 years. But, certainly after one crosses the age of 50 years the Government has a right to review the ~~utility~~ <sup>usefulness</sup> or otherwise of an official to continue in service. This can be done on 2 grounds:

- (a) On effectiveness of the applicant beyond that age.
- (b) On doubtful integrity.

There are a number of guidelines and judgments on this subject and most of them relate to how the ineffectiveness or otherwise after the age of 50 years is to be taken into account for the purpose of premature retirement but there is not a single judgment <sup>to our knowledge</sup> which comes in the way of the respondents taking recourse to this rule when they have doubts <sup>about the</sup> ~~of~~ integrity <sup>about</sup> of the official. Needless to say when lack of integrity is established beyond doubt the Government can inflict deterrent penalties on the official. When there is justifiable doubt about the integrity of a person, they can certainly take recourse to this rule and can ease out a person without tears and stigma, at any time after the age of 50 years.

8. The learned counsel for the applicant has cited several decisions. We have seen all those decisions. One of them comes to the help of the applicant since a decision has been taken by the respondents to prematurely retire the applicant on grounds of doubtful integrity. During the course of hearing, the learned counsel for the applicant ardently pleaded that it ~~was as~~ <sup>was as</sup> ~~on~~ late as 10.6

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by a judgment in O.A.No.264/90 the applicant was given regular promotion to the J.A.G. with effect from 1.6.85. We wish to point out that this decision of 10.6.91 in O.A.No.264/90 was no more than an insistence on the respondents implementing the decision taken by the Railway Board on 5.9.88 to promote him regularly to that scale after the entire process was completed. The Railways attempted to depart <sup>in October 1989</sup> from an earlier decision by a different procedure. ~~in October, 1989~~. That is where the Tribunal intervened and directed that the Railways should implement their earlier decision which was taken after thorough and due consideration. Even so, this would only indicate that the applicant was otherwise efficient and effective but this does not help him when a decision is taken on doubtful integrity.

9. There is a recent decision of the Hon'ble Supreme Court on this subject from which we draw considerable help. In their decision reported in AIR 1990 (SC) 1004 (C.D.Aila-wadi Vs. Union of India) Their Lordships had held (para 8) that "An aggrieved Civil Servant can challenge an order of compulsory retirement (the word 'compulsory' had been used in place of 'premature' retirement which is the subject of the case) 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 ground, or
- (iii) that it is an arbitrary decision."

We have, therefore, only to see whether the action of the respondents is violative of any of the principles indicated in the above judgment of the Hon'ble Supreme Court. From the averments of the respondents as well as from a perusal of the records we find that the decision taken by the respondents not on grounds of efficacy of the applicant

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Copy to:-

1. The Secretary(Estt), Ministry of Railways, Railway Board, Rail Bhavan, Union of India, New Delhi-110001.
2. One copy to Sri. G.Ramachandra Rao, advocate, CAT, Hyd.
3. One copy to Sri. D.Gopal Rao, SC for Railways, CAT, Hyd.
4. Copy to ~~all Benches and~~ Reporters as per standard list of CAT, Hyderabad Bench.
5. One spare copy.

Rsm/-

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but on grounds of doubtful integrity on the part of the applicant. As stated earlier, if this is the ground on which a decision to prematurely retire the applicant had been taken, none of the citations given by the applicant comes to his help. We have seen the records of the ~~applicant~~ <sup>Railways</sup> and the deliberations of the Screening Committee i.e., the full Railway Board in this case. The service record of the officer ~~was~~ a whole had been scrutinised by the Railway Board. There had been several cases where the applicant had been involved in vigilance cases. Apart from a major penalty in 1980 he had also been censured again as late as in 1990. The Railway Board and the Hon'ble Minister for Railways on behalf of the President of India came to the conclusion that the officer had not been able to get over this trait of his. (involvement in cases attracting adverse notice of the vigilance) in spite of having been punished once with a major penalty of reduction from a Senior Scale to a Junior Scale in 1980. Therefore, considering the past record of vigilance of the officer and the fact of his lack of integrity the Railway Board unanimously decided that it was a fit case for premature retirement. We are, therefore, of the firm opinion that the decision taken was after forming the requisite opinion and it is not arbitrary. It is also not on collateral grounds since the Railways have not yet dropped the disciplinary proceedings initiated. We do not find from the records that the decision taken is ~~case~~ in any way dependant on the major penalty ~~because~~ that is still in the offing. We are, therefore, satisfied that the ~~taken~~ <sup>and legal</sup> decision by the Railway Board is quite justified. Under these circumstances we find no reason to interfere and accordingly dismiss the application with no order as to costs.

R. Balasubramanian  
( R. Balasubramanian )  
Member(A).

T. Chandrasekhar Reddy  
( T. Chandrasekhar Reddy )  
Member(J).

Dated: 2<sup>nd</sup> April 92

Registration(J)

TYPED

CHECKED BY

COMPARED BY

APPROVED BY

THE HON'BLE MR.

AN

V.C.

THE HON'BLE MR. R.B.

UBRAMANIAN:M(A)

AND

THE HON'BLE MR. T.CHA

EKHAR REDDY:  
MBER(JUDL)

AND

THE HON'BLE MR. C.J. RO

MBER(JUDL)

Dated: 2/4/1992.

ORDER / JUDGMENT

R.A./C.A./M.A.No.

O.A.No.

in  
235791

T.A.No.

(W.P.No.)

Admitted and interim directions issued

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Central Administrative Tribunal

M.A.Ordered/Rejected DISPATCH

No order as to costs.

HYDERABAD BENCH

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