

23

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 763/91.

Dt.of Decision : 1.11.1994.

K. Prasada Rao

.. Applicant.

Vs

1. Sr. Divl. Electrical
Engineer (Maintenance)
SC Rly, Divisional Office,
Vijayawada - 520 001.
2. Divl. Railway Manager,
SC Rly, Divisional Office,
Vijayawada - 520 001.

.. Respondents.

Counsel for the Applicant : Mr. G.V. Subba Rao

Counsel for the Respondents : Mr. D. Gopala Rao, SC for Rlys.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

29

.. 2 ..

O.A.No.763/91

Date of Order: 1.11.94

X As per Hon'ble Shri A.B.Gorthi, Member (Admn.) X

The applicant who joined the railways as a Khalasi on 24.5.1959 secured several promotions in his career and became a Head Clerk in 1986. He was due for promotion as Chief Clerk as per his seniority in the year 1990 but all of a sudden he was confronted with the impugned memo dated 31.8.1990 issued by the Senior Divisional Electrical Engineer (Maintenance), Vijayawada, SC Railway, by which the applicant was compulsorily retired with immediate effect. In the said memo it was further stated that the applicant would be paid pay and allowances for a period of 3 months in lieu of the notice for the said period. Aggrieved by the same he has filed this OA with a prayer that the impugned memo be set aside as arbitrary and illegal and he be reinstated in service with all consequential benefits.

2. Heard learned counsel for both the parties.

Mr.G.V.Subba Rao, learned counsel for the applicant has assailed the validity of the impugned order of compulsory retirement on several grounds. He asserted that the procedure prescribed was not followed and that the applicant was compulsorily retired notwithstanding the satisfactory service record. No adverse remarks were ever communicated to the applicant and hence it cannot be said that the compulsory retirement of the applicant could be in public interest. He further contended that the impugned memo was issued more on account of bias

..3

.. 3 ..

on the part of the superior officers of Even the representation made by the applicant soon after he/compulsorily retired was not acted upon by the respondents for a long period and it was only after a gap/about two years it was turned down by the Senior Divisional Electrical Engineer who issued the impugned order of compulsory retirement.

3. Refuting the contentions raised by the applicant, learned counsel for the respondents stated that the case of the applicant was subjected to proper examination by ^a ~~duly constituted~~ review committee. The said review committee having examined the confidential reports and the service record of the applicant came to the conclusion that it would not be in public interest to retain the applicant in service any longer. It is also the contention of the respondents that the procedure prescribed was duly followed, in that, ~~there was total~~ compliance with Rule 1802 (a) of the Indian Railway Establishment Code Vol. II. The respondents further brought out in their counter affidavit that the applicant was censured on three occasions for unauthorised absence, misbehaviour and awarded minor penalty of withholding of increments on two occasions.

4. Mr. G.V. Subba Rao has drawn our attention to Tarsem Nath Kaushal vs. Union of India reported in I (1988 ATLT CAT (SN) 20). In that case it was held that when the records reveal that ~~there is~~ no material on the basis of which a reasonable conclusion can be drawn as to the existence of public interest to justify the compulsory retirement, the Tribunal has necessarily ^{to} interfere.

There can be no dispute that such interference by the Tribunal is a must when it is seen that the performance of the officer had been really satisfactory. What is therefore important for us to consider is whether or not the service record of the individual would sufficiently justify the action taken by the respondents. We shall advert to this at a later stage in our judgement.

5. The next case on which Mr.G.V.Subba Rao placed reliance is that of V.E.Mohamed Ibrahim v. Union of India, 1994 (1) ATJ 199. That was a case where compulsory retirement was ordered on the sole ground of the imposition of ^a minor penalty of stoppage of increments for six months. There was total non examination of the conduct of the applicant which preceded imposition of the said penalty nor a review of the overall performance of record of service during the preceding years was undertaken. Consequently the order of compulsory retirement was quashed.

6. In H.C.Gargi v. State of Haryana 1986 (3) SIR 57, Supreme Court had the occasion to examine the scope of the term "public interest". Keeping in view the facts in that case which disclose that the applicant was graded average in one year and that his grading of below average in the subsequent year did not pertain to his integrity, and taking note of the fact that there was an allegation that the employee incurred the displeasure of his superior officer, the Apex Court came to the conclusion that the order of compulsory retirement could not be said to be in public interest. It cannot be disputed that it is of utmost importance that the competent authority should after due examination of the service record of the employee come to a definite conclusion that

(52)

compulsory retirement of the employee would be in public interest. If it cannot be said that such compulsory retirement would be in public interest, it automatically implies that such compulsory retirement is not warranted.

7. In view of the aforesaid contentions raised on behalf of the applicant, we considered it necessary to call for ~~any~~ examine ~~the~~ service record of the applicant. Learned standing counsel for the respondents has made them available. We have not only perused them but have also shown the same to the learned counsel for the applicant.

8. A careful examination of the service record of the applicant would show that he had a lack-lustre record of service. He was consistently graded ~~as~~ average or below average by not one but several other reporting officers. Repeatedly it was observed that he was not coming up to the mark in the performance of the duties. Added to this, the record reflected, as already stated that the applicant was censured on three occasions and awarded minor penalties twice. After having perused the service record of the applicant we ~~are~~ left with no doubt that the order of compulsory retirement of the applicant can justifiably said to be in public interest. ~~cannot be~~ We also ~~could not~~ uphold the contention raised on behalf of the applicant that any of the applicant's superior officers held ~~any~~ bias against the applicant or acted malafide.

9. In the ACRs of the applicant for a couple of years there were ^{some} adverse remarks. Though it was alleged on behalf of the applicant that he was never communicated any adverse remarks, we found from the

record that adverse remarks whenever endorsed were duly communicated to the applicant and his written acknowledgement of the same was kept on record. In this context learned standing counsel for the respondents has placed reliance on the following judgements of the Supreme Court :

(1) Baikuntha Nath Das v. Chief Dist. Medical Officer AIR 1992 SC 1020.

(2) Union of India v. V.P.Seth AIR 1994 SC 1261.

10. In Baikuntha Nath Das's case some very valuable guidelines and principles were enunciated by the Apex Court for determination of the question of validity of compulsory retirement under Fundamental Rule 56 (j). Salient amongst the guidelines are that an order of compulsory retirement is not a punishment, that the order has to be based on forming the opinion that it is in public interest and that principles of natural justice are not attracted. It was further categorically stated that un-communicated adverse remarks, if any, could be taken into consideration by the Government in forming its opinion on the desirability of retaining or otherwise of the employee.

11. In the instant case, as already observed, the adverse remarks reflected in some of the CRs of the applicant were duly communicated to him. Even if it is stated that some other entries in the CRs which were adverse were not communicated, in view of the decision of the supreme court in the aforeslated cases, the said omission on the part of the respondents cannot be of any assistance to the applicant.

.. 7 ..

12. Learned counsel for the applicant pleaded that ^{if} the respondents had found the applicant not fit for retention, as a Head Clerk, they should have offered him the alternative lower appointment of Senior Clerk. Rule 1802 of the Indian Railway Establishment Code Vol. II lays down that ^{if} the competent authority is of the opinion that it is in the public interest to do so, it has the absolute right to retire any railway servant by giving him notice of not less than 3 months in writing or by offering him 3 months pay and allowances, in lieu of such notice, in any case where the employee is attaining the age of 55 years. to Proviso Rule 1802 is to the effect that if a railway servant holding Group 'C' post in a substantive capacity is holding a higher Group 'A' or Group 'B' post in an officiating capacity, he could be allowed on his request in writing to continue in service in Group 'C' post held by him substantively. Thus we find no statutory support to the plea raised by the applicant's counsel. Mr. G. V. Subba Rao however has drawn our attention to an administrative instruction as printed in Railway Establishment Manual by Sri M. L. ^{Jandek} page 305. Relevant portion is extracted below:-

" The Committee may follow the following criteria in taking decision:

- (a) Whether integrity is doubtful
- (b) Whether he is ineffective.
- (c) Whether he is ineffective.
- (d) Whether his service in last preceding 5 years was not satisfactory.

If the reply to above is in the affirmative, the Rly. employee may be retired. When the reason is ineffectiveness it may be considered if he is fit for any lower post. If so it may be indicated in his notice of compulsory retirement and if he accepts the lower post, he may be continued therein. However he may be re-promoted later under normal rules, after 2 years service in lower post."

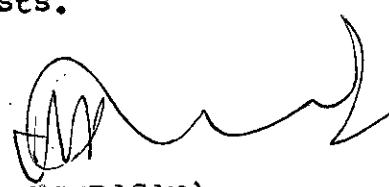
35

.. '8 ..

13. The above would indicate that it was open to the review committee to consider the record of the employee and recommend if he is fit for any lower post. On such recommendation, the applicant was to be informed accordingly and, on his willingness to accept, ^{be given a} the lower post; failing which he would be compulsorily retired. The said instruction is in the nature of a guideline and the fact that the Review Committee after examining the complete service record of the applicant came to the conclusion that it would be in public interest to compulsorily retire him, it cannot be said that this aspect of the matter was totally ^{over} glossed _{by} the Review Committee.

14. In view of what has been stated above we are of the considered view that the case of the applicant was duly considered by the competent authority in accordance with the procedure laid down by the extant rules/instructions. Also, we have not found any arbitrariness or malafides on the part of the authorities concerned. Accordingly we find no merit in this OA and the same is dismissed but there shall be no order as to costs.


(A.B.GORTHI)
Member (Admn.)


(A.V.HARIDASAN)
Member (Judl.)

Dated: 1st November, 1994

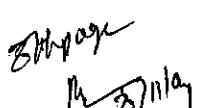
(Dictated in Open Court)


DEPUTY REGISTRAR(J)

sd

COPY TO :

1. Senior Divisional Electrical Engineer (Maintenance)
South Central Railway, Divisional Office,
Vijayawada - 520 001.
2. Divisional Railway Manager, South Central Railway,
Divisional Office, Vijayawada - 520 001.
3. One copy to Mr.G.V.Subba Rao, Advocate, CAT, Hyderabad.
4. One copy to Mr.D.Gopal Rao, Addl.CGSC, CAT, Hyderabad.
5. One copy to Library, CAT, Hyderabad.
6. Copy to all the Reporters, CAT, Hyd.
7. Copy to all Benches as per list of CAT, Hyd.
8. one spare copy.


M. S. Nayak

R 11/11/94

Typed by

Compared by

Checked by

Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HRIDYAN : MEMBER(U)

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A)

Dated: 1.11.94

~~ORDER/JUDGMENT.~~

~~M.A./R.P/C.P/No.~~

~~O.A. NO. 763/91~~

~~T.A. NO.~~

~~(W.P. NO.)~~

~~Admitted and Interim Directions
Issued.~~

~~Allowed.~~

~~Disposed of with Directions.~~

~~Dismissed.~~

~~Dismissed as withdrawn.~~

~~Dismissed for Default.~~

~~Rejected/Ordered.~~

~~No order as to costs.~~

YLKR

