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CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A. No.728 OF 1995.

DATE OF ORDER- 18.02.1998.

BETWEEN :

M. RAVI KUMAR, U.D.C.,
N.C.C. Directorate, A.P.,
Secunderabad,
(Under orders of retirement),
Residing at Vanasthalipuram,
C-301, Sachivalayanagar,
Hyderabad.

.. APPLICANT

A N D

1. Union of India, represented by
its Secretary, Ministry of Defence,
New Delhi.
2. The Director General, N.C.C.
West Block No.4,
R.K.Puram, New Delhi-66.
3. The Deputy Director General (P&P),
Office of Director General,
N.C.C. West Block No.4,
R.K.Puram, New Delhi- 110066.
4. The Deputy Director General (NCC)
N.C.C. Directorate, A.P.
General Choudary Road,
Secunderabad-3.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT : MR. K.K. CHAKRAVORTHY

COUNSEL FOR THE RESPONDENTS : MR. KOTA BHASKARA RAO, CGSC

C O R A M :

HONOURABLE MR. R. RANGARAJAN, MEMBER (ADMINISTRATIVE)

HONOURABLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDICIAL)

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O R D E R.

(Per Hon. Mr. B.S. Jai Parameshwar, Member (Judicial)).

1. Heard Mr. K.K. Chakravorthy, the learned counsel for the applicant. None appeared for the respondents. The respondents have filed their reply. Since the O.A. was filed in 1995, we propose to consider the reply and decide the O.A. in accordance with Rule 16(2) of the C.A.T. (Procedure) Rules, 1987.

2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 19.6.1995.

3. While the applicant was working as U.D.C. in the N.C.C. Directorate, A.P., Secunderabad, the respondent No. 3 in exercise of his power under Rule 48 of the CCS (Pension) Rules ordered to retire the applicant from service on his completion of 30 years of service in the Directorate. The proceedings under which the respondent No. 3 took action are at Annexure-A3.

4. Against the action of the respondent No. 3 the applicant filed O.A. No. 1212 of 1994 before this Tribunal. On 14.3.1995 this Tribunal directed the respondents to dispose of the representation dated 15.9.1994 of the applicant.

5. Accordingly, the Representation Committee considered the representation dated 15.9.1994 and rejected the same. The decision of the Representation Committee was communicated to the applicant by the respondent No. 1 vide order No. 10285/DGNCC/PERS(C) dated 17.5.1995. In the said order reasons for taking such decision were also disclosed.

6. The applicant has filed this O.A. challenging the order dated 18.8.1994 of the respondent No. 3 and the order dated 17.5.1995 of the Representation Committee and has prayed for setting aside the said orders and for

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consequential direction to the respondents to reinstate him into service with all consequential benefits.

7. The main grounds on which the applicant has challenged the orders are that the Representation Committee failed to consider the various grounds taken by him in his representation and that the respondent No.3 while ordering him premature retirement had taken into consideration certain adverse entries in the ACRs which were not at all communicated to him.

8. The respondents have filed a counter. Their contention is that the applicant was not punctual in attendance despite warnings; that the applicant was awarded punishment of withholding of two annual increments without cumulative effect on 29.8.1973; that his performance throughout his career was far from satisfactory and that in support of the said averment, they have relied upon Annexures-B.1 to B.8 wherein various warnings were issued to the applicant. They deny that the action of the respondent No.3 was a revengeful one. They further submit that the ACRs of the applicant were not favourable to continue the applicant in service. They also submit that the adverse entries found in the ACRs of the applicant were duly communicated to the applicant and he was given adequate opportunity. They have produced Annexures-D to L to the reply substantiating that the adverse entries were in fact communicated to the applicant.

9. The only point for our consideration is, whether the action of the respondents in premature

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retiring the applicant from service was justified or not. Under Rule 48 of the CCS(Pension)Rules the authority has every right to continue his employee after he reaches a particular age in the service. Government in order to consider whether its employee can be continued beyond that particular age has to rely upon the past service records, ACRs, capability, suitability and integrity of the employee. When once the Government takes into consideration these factors and comes to a conclusion that it is not desirable for it to continue the employee in service from the particular age, then the Court or the Tribunal cannot interfere with the decision of the Government unless the employee substantiates that the decision of the Government was either mala fide or contrary to the service records.

10. As already stated above, the main contention of the applicant is that the adverse entries in his ACRs were not at all communicated to him and that therefore, the respondent No.3 could not have taken a decision to retire him prematurely basing on those uncommunicated adverse entries. In the case of BAIKUNTHA NATH DAS v. CHIEF DISTRICT MEDICAL OFFICER, reported in 1992(2)SCC(L&S) 521 The Hon'ble Supreme Court has held that the compulsory retirement is not a punishment and that the Government has every right to consider whether its employee can be continued in service after he reaches a particular age.

11. Even in the case of K.KANDASWAMY v. UNION OF INDIA, reported in AIR 1996 SC 277 the Hon'ble Supreme Court has held that compulsory retirement is not a punishment. It does not cast any stigma on the retired employee.

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12. As regards non-communication of adverse entries to the Government employee and taking into consideration such adverse entries while taking action under Rule 48 of the CCS(Pension) Rules, the Hon'ble Supreme Court in the case of H.G. VENKATACHALIAH SETTY v. UNION OF INDIA AND OTHERS, reported in 1998 SCC(L&S) 152 has observed as follows :-

"4. It has been further urged by Shri Sundaravardan that the order of compulsory retirement could not be passed on the basis of a solitary adverse entry contained in the annual confidential report because the earlier record of the appellant was clean. Merely because till his promotion to the post of Deputy Chief Mechanical Engineer on 20.11.1974, there was nothing adverse in the service record of the appellant, does not mean that the action for compulsory retirement of the appellant could not be taken after such promotion if it is found that after such promotion there has been deterioration in his performance and an adverse remark about his integrity has been made. The contention of Shri Sundaravardan that an order for compulsory retirement cannot be passed on the basis of a solitary adverse entry in the service record cannot be accepted. The question whether action for compulsory retirement should be taken on the basis of a solitary adverse entry has to be considered in the facts of each case. Having regard to the facts of the present case, it cannot be said that action for compulsory retirement could not be taken against the appellant.

5. Lastly, it was urged by Shri Sundaravardan that the adverse remark was not communicated to the appellant and in the absence of such communication the said remark could not be made the basis for passing the order of compulsory retirement. We find no merit in this contention in view of the law laid down by this Court in Baikuntha Nath Das v. Chief Distt. Medical Officer wherein it has been held that an order of compulsory retirement is not liable to be quashed by court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration and that the said circumstances, by itself, cannot be a basis for interference."

13. The contention of the applicant that the adverse entries were not communicated to him appears to be misconceived. The respondents have produced Annexures D to L to show that the adverse entries were in fact communicated to the applicant. Annexure D refers to the confidential report for the year 1989-90; Annexure E

refers to confidential report for the year 1987; Annexure F refers to the confidential report for the year 1985; Annexure G refers to the confidential report for the year 1983; Annexure H refers to the confidential report for the year 1982; Annexure I refers to the confidential report for the year 1981; Annexure J refers to the confidential report for the year 1979; Annexure K refers to the confidential report for the year 1978 and Annexure L refers to the confidential report for the year 1975. We have perused the entries made in these confidential reports. The performance of the applicant was far from satisfactory. No specific grading has been given by the authorities. Above all, he was not upto the mark. Further the respondents have furnished Annexures A, B.1 to B.7 to substantiate that previously the applicant was given sufficient warning to improve his conduct and performance.

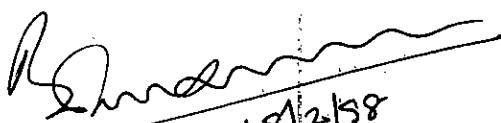
14. After going through these documents and also relying upon the decisions of the Hon'ble Supreme Court, we are of the considered view that no mala fides can be attributed to the respondent No.3 when he took the decision to retire the applicant under Rule 48 of the CCS (Pension) Rules.

15. The learned counsel for the applicant while challenging the action of the respondents in retiring the applicant prematurely relied upon the decisions of the Ahmedabad and Mumbai Benches of this Tribunal. In view of the latest pronouncements of the Hon'ble Supreme Court with respect to the scope of the Tribunal in case of premature retirement, as discussed in the earlier paragraphs, we feel it not necessary to refer to the citations relied upon by the learned counsel for the applicant.

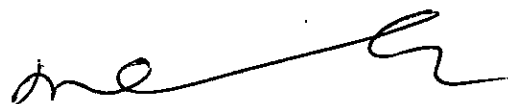
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16. There are no merits in this O.A. We do not find any illegality or irregularity in the impugned orders.

17. Hence the only order that can be passed in this O.A. is to dismissed the same. Accordingly, the O.A. is dismissed, leaving the parties to bear their own costs.

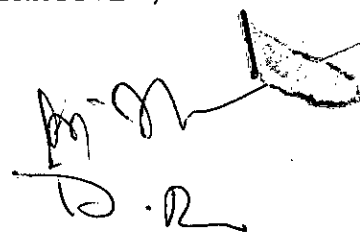


18/2/98
(B.S. JAI PARAMESHWAR)
MEMBER (JUDICIAL)



(R. RANGARAJAN)
MEMBER (ADMINISTRATIVE)

DATED THE 18TH FEBRUARY, 1998.



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DJ/

DA.728/95

Copy to:-

1. The Secretary, Ministry of Defence, New Delhi.
2. The Director General, N.C.C. West Block No.4, R.K.Puram, New Delhi.
3. The Deputy Director General (P&P), O/o The Director General, N.C.C. West Block No.4, R.K.Puram, New Delhi.
4. The Deputy Director General (NCC), N.C.C. Directorate of A.P., General Choudary Road, Secunderabad.
5. One copy to Mr. K.G. Chakravorthy, Advocate, CAT., Hyd.
6. One copy to Mr. K. Bhaskara Rao, Addl. CGSC., CAT., Hyd.
7. One copy to BSJP M(A), CAT., Hyd.
8. One copy to D.R.(A), CAT., Hyd.
9. One duplicate copy.

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23/2/98
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

THE HON'BLE MR. B. S. JAI PARAMESHWAR :
M(J).

DATED: 18/2/98

ORDER/JUDGMENT

~~M.A./R.A./C.A. NO.~~

in

D.A. NO.

728/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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