

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH**

O.A. 519 of 2001

Date of Decision : 14.06.2004

Mr. P. K. Pathak : Applicant (s)

Mr. S. Paul : Advocate for the Applicant (s)

Versus

Union of India & Ors. : Respondent (s)


Mr. P. Shankaran : Advocate for the Respondent (s)

CORAM:

THE HON'BLE MR. M. P. SINGH : VICE CHAIRMAN

THE HON'BLE MR. A. S. SANGHVI : MEMBER (J)

ORDER

1. Whether Reporters of Local papers may be allowed to see the judgment?
 2. To be referred to the Reporter or not?
 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?
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Mr. P. K. Pathak,
S/o. Late S. D. Pathak,
Date of Birth : 05.05.1946,
Upper Division Clerk,
P. No. : 701627,
Gun Carriage Factory,
Jabalpur.

- Applicant -

Advocate : Mr. S. Paul

Versus

1. Union of India, through
Its Secretary,
Ministry of Defence,
New Delhi.
2. Chairman,
Ordinance Factory Board,
10 - A, S. K. Bose Marg,
Kolkata (W. B.)
3. General Manager,
Gun Carriage Factory,
Jabalpur. (M.P.)

- Respondents -

Advocate : Mr. P. Shankaran

ORDER
O.A. 519 of 2001

Date : 14th/06/2004

Hon'ble Shri. A. S. Sanghvi : Member (J).

Aggrieved by the order dated 7.5.2001 prematurely

retiring the applicant under Rule 56 (j) of the Fundamental Rules, the applicant who was serving as a UDC, has approached this Tribunal. Incidentally, this is the second round of litigation. Earlier, in view of the order dated 18.4.2000 retiring him compulsorily from the service on the expiry of the 3 months notice, he had approached the Tribunal by moving O.A. 455 of 2000 and the Tribunal vide order dated 3rd October 2000 allowed the O.A. and quashed the impugned order dated 18.4.2000. The Tribunal had however given ~~an~~ liberty to the respondents to re-assess the performance of the applicant on the date it was due, based on records available on the said date as per the rules and to ignore the integrity column. Pursuant to this opportunity given, the respondents have reassessed the performance of the applicant and again passed the impugned order dated 7.5.2001 retiring the applicant under Rule 56 (j) of the Fundamental Rules. The applicant has again challenged this order contending inter alia that the order is arbitrary one and issued on account of the prejudice against him. According to him, one Mr. H. R. Sheshan, Works Manager of the respondent no. 3 had demanded bribe from him and he had reported this matter to CBI. The CBI had laid a trap and had caught Mr. Sheshan red

handed while accepting the bribe from him. The CBI has also lodged a criminal case against Shri. Sheshan in a Special Court and he being the main witness in that case the department was pressurizing and threatening him. When he had not succumbed to the pressure he has been deliberately issued order of compulsory retirement in spite of his work being satisfactory and no case of voluntary retirement having been made out against him. The order dated 18.4.2000 compulsorily retiring him was quashed by the Tribunal after examining all aspects of the case and finding that the column regarding integrity in the ACR for the years 1996-97 and 1997-98 were filled in after minor penalty was imposed on him in the disciplinary proceedings. The Tribunal had observed that such a belated action was punitive and prejudicial to his interest. The respondents have however again on the basis of the same ACRs etc., passed the same orders clearly suggesting the act of the prejudicial mind. He has prayed for quashing and setting aside the order of compulsory retirement and for reinstatement in service.

2. The respondents in their reply statement have stated that on examining the service record of the applicant by the appropriate reviewing committee the following short comings were found in his case :-

- a. The performance of the individual was rated poor, fair / average in the years 74, 75, 79, 80, 81, 82, 83, 96-97 and 98. Even in the year 1999-2000 and 2000-2001 was given an over all grading of average in ACR.
- b. The applicant was reverted from the post of UDC to LDC as he could not successfully complete the probationary period due to un-satisfactory performance.
- c. In all these years the shortcomings noticed were lazy, poor organising ability, poor writing ability, unreliable, disobedient, un-interested in work, missing from the place of duty without intimation, un-resourceful.
- d. He has been a habitual late comer.
- e. Even as a time-keeper he is incompetent.

3. His overall grading for the year 1997-98 was average, for the year 1999-2000 was also average and for the year 2000-2001 was also average. It is further contended by the respondents that the applicant had not shown any improvement despite opportunities given for improvement on a number of occasions. He had not shown any improvement in his work and efficiency despite warning given to him, which means he has reached a saturation level and cannot be improved upon. Relying on the Supreme Court decisions in the case of **R. L. Bhutai Vs. Union of India** reported in **1970 (2) SCC 876** and **State of Punjab Vs. Gurdas Singh**

reported in 1998 (4) SCC 92, it is contended that the reviewing committee was of the opinion that it was in the public interest to retire the applicant as he had not remained competent and efficient. They have denied that the decision to compulsorily retire the applicant was taken in view of the applicant being associated in criminal case against Mr. Sheshan and stated that the decision is taken purely on the basis of reviewing the entire service record of the applicant and in public interest.

4. They have prayed that the O.A. be dismissed with costs.

5. We have heard the learned counsel for both the parties at length and have carefully perused the file pertaining to the voluntary retirement case of the applicant made available by the learned counsel for the respondents at our direction. As observed above, this is the second order of compulsory retirement issued against the applicant and the applicant has challenged the same on practically the same grounds. He was appointed on 4.3.68 and had completed 30 years of service on 3.3.98. His case for further retention in service was reviewed as per the scheme laid down between July to September '97.

The review committee however could not assess his integrity as he was under the cloud for lack of integrity in his ACR for the years 1996-97 and 1997-98. The integrity column was not filled up because he was under the cloud. In a disciplinary case pending against him the applicant was imposed with a penalty of reduction in pay by one stage for a period of one year without cumulative effect on dated 30.3.99. Pursuant to the orders passed on the disciplinary proceedings the column regarding integrity in his ACR for the years 1996-97 and 1997-98 was filled with following endorsement 'Suspicion on Integrity stands confirmed due to imposition of penalty vide G.M.'s. order no. 18/77/97/VO dated 30/3/99.'

6. It appears that the review committee had assessed the suitability of the applicant for retention in service on 27.7.98 but did not submit his assessment as the disciplinary case against the applicant was pending. On completion of the disciplinary proceedings the reviewing committee assessed his performance and kept in view his integrity as well as past service record and concluded that the applicant was not fit enough for retention in service. His case was forwarded to OFB Headquarter, Calcutta and high level committee.

reexamined the decision and concurred with the findings of the review committee. However when the order of compulsory retirement were issued, they were challenged before the Tribunal in O.A. 455 of 2000. The Tribunal while quashing that order observed as under :-

"The main reason for premature retirement of the applicant appears to be suspicion on the integrity as a result of minor penalty imposed on the applicant based on Rule 16 charge sheet. The disciplinary authority who was also the appointing authority could very well issued charge sheet under Rule 14 if the charges were considered so grave so as to have suspicion on the integrity of the applicant and if after the inquiry it was proved that the applicant failed to maintain absolute integrity, he could have been compulsorily retired or removed or dismissed from service. The authorities waited for about two years for conclusion of the disciplinary proceedings through which only minor penalty could be imposed and it imposed only a smaller minor penalty. Further the order under 56 (j) was preliminary based on penalty order dated 30.3.99 as the adverse remarks on integrity in the report of 1996-97, 1997-98 were included based on this penalty order. In such circumstances, we are of the view that the order of premature retirement has punitive element."

7. The Tribunal therefore quashed the order impugned before it mainly on the ground that the review committee had relied on the integrity column in the ACRs of 1996-97 and 1997-98 which were filled up after the minor penalty was imposed in the disciplinary proceedings against the applicant.

The Tribunal however had given opportunity to the respondents to reassess the performance of the applicant on the date it was based on records available on the said date, as per rules, but ignoring the integrity column.

8. It appears that subsequent to the directions of the Tribunal the case of the applicant was again placed before the reviewing committee and the reviewing committee considered his case for further retention in the service on 11.11.2000. The review committee considering the performance report of the applicant from 1968 to 1998 observed that his performance was rated poor, fair / average in the years 1974, 75, 79, 80, 81, 82, 83, 96, 97, 98. It also noted that the applicant was reverted from UDC to LDC in the year 1983, as he could not complete the probationary period due to unsatisfactory performance. The committee has also noted that the performance report showing the following shortcomings was communicated to the applicant but he had not shown any improvement. He was found to be lazy, having poor organising ability, poor writing ability, un-reliable, disobedient, un-interested in work, missing from place of work without intimation, un-satisfactory performance, un-

resourceful etc. The Committee further observed in its assessment report that the applicant whenever posted in a section which was having important work and which required some skills, he utterly failed to respond to the working requirements of the section and the same got manifested in his performance reports. This clearly shows that his inefficient, unreliable in work and along with his poor writing ability, is not even of little use to this organisation. It has further observed that the performance of the individual whenever adjudged good was based on his work done mostly in sections where not much work was there and his actual shortcomings, deficiencies and utility could not be correctly brought out. The review committee has further observed that the applicant instead of becoming more experienced, knowledgeable, efficient and effective as is normally the case with others, became more ineffective, in-efficient and in capable of giving any meaningful contribution to organisation.

9. These recommendations of the review committee were sent for final decision to the OFB who agreed with the committees' recommendations and directed issuance of 3 month's notice to the applicant. The applicant pursuant to

the receipt of the notice submitted his representation on dated 26.5.2001 again alleging that he was being victimised because of his lodging complaint against the superior officer. The representation of the applicant was placed before the review committee, which rejected the same. The matter was sent again to OFB, which after further examination directed the issuance of the order for compulsory retirement. It is quite obvious from the above discussion that the case of the applicant has been thoroughly examined by different committees and all have agreed that he has become ineffective and a dead wood and he should not be retained further in the service. The main argument of the applicant was that his entire service record has not been considered and even though he had been promoted from LDC to UDC and had been putting up satisfactory work between the period of 1988 to '96, the reviewing committee relying solely on some of the ACRs after 1996 has recommended his compulsory retirement from service. He has again raised the same allegation of being victimised for being a complainant in the case against the Manager, Mr. Sheshan and having not agreed to oblige the department in that case.

10. We have carefully gone through the service record of the applicant made available to us by the learned counsel for the respondents. It clearly appears that the initial service period of the applicant was not satisfactory and he was even reverted as LDC from UDC post, as he could not satisfactorily complete the probationary period of UDC. However, he was again promoted as UDC in the year 1986 and thereafter was assessed as average. It appears from the service record of the applicant that between 1988 to 1996 his performance was adjudged as Good but then this performance was in the forge shop. After 1996 when he was shifted to QR Section his performance had gone down and he had been assessed average for the years 1996-97, 1997-98 and subsequently also. It is also to be noted that he had also been imposed with a minor penalty in a disciplinary proceedings pending against him. He had also been communicated with the assessment of average for the years 1996-97, 1997-98. In the ACR of 1996-97 it is observed that he has to improve his clerical ability in drafting and noting and ability to express. The reviewing officer has commented that Mr. Pathak has been penalised and warned on a number of occasions for un-authorized absence. For the year 1997-98 also, the grading is average

and the reviewing officer also relates to his coming late and being found incompetent even as time keeper. The applicant has not made any representations against the communications of his short comings and gradings. It is pertinent to note that the reviewing committee has observed that the performance of the applicant was good when he was posted in section where no difficult work was there and his actual shortcomings, deficiencies and utility could not be correctly brought out, but whenever he was posted in section which was having important work, and required some skills, he had utterly failed to respond to the work in requirement and the same got manifested in his performance report which showed that he was inefficient, unreliable in work etc.

11. The main question before us is that whether there was sufficient material before the reviewing committee to believe that the applicant had become a dead wood. Considering the review committee's report as well as subsequent orders of the reviewing committee, we are of the clear opinion that the review committee as well as the representation committee had before them sufficient material as they have considered the entire service performance of the applicant while assessing his

case. We do not find much substance in the allegation of the applicant that he is being victimised because of his part played in the lodging of the criminal case against Mr. Sheshan. It is to be noted that the case against Mr. Sheshan came to be lodged in November '99 while the reviewing committee had relied upon the ACRs for the years 1996-97 and 1997-98. There was no question of any victimisation in the years 1996-97 or 1997-98 and the average entries report in this ACRs cannot be said to be outcome of the complaint lodged by him against Mr. Sheshan. It is also to be borne in mind that the reviewing committee members on both the occasions were different and there was no reason for them to submit a false report holding the applicant to be no more efficient and competent to continue in the post of UDC. In the case of **State Of Gujarat Vs. Umedbhai M. Patel reported in (2001) 3 SCC 314** the Supreme Court has summarized the principal which would lead to the compulsory retirement on a government servant. It has laid down as under :-

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the Confidential record shall be taken note of and be given the due weightage in passing such order.

(v) Even un-communicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental inquiry when such course is more desirable.

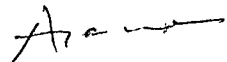
(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.


(viii) Compulsory retirement shall not be imposed as a punitive measure.

12. The impugned order in the instant case cannot be said to have been passed as a punishment to the applicant. Admittedly, no departmental proceedings were pending against the applicant or contemplated against the applicant. As observed earlier the entire service record of the applicant is considered by the reviewing committee and though the record does not reveal any adverse entries recorded it is shown that his performance in the entire service cannot be said to be above average. Instead of showing any improvement during the later years of his service, he has shown deterioration. He

has not remained efficient or put up satisfactory work whenever the circumstances demanded and the record reveals that he had been warned for late coming, for being lazy or disobedient and un reliable. Such employees in the Defence Department, where work of high caliber and complete satisfaction is required can easily be considered to be dead wood and as such their further retention in the service cannot be said to be in public interest. We, therefore, do not see any merit in this O.A. We are satisfied that the impugned order is issued by the competent authority after fully assessing the entire service record of the applicant and considering all relevant aspects requiring further retention of the applicant in that service. The order as such, therefore cannot be said to be arbitrary, or illegal or perverse.

13. For the reasons discussed above, and in the facts and circumstances of the case, we are of the opinion that the O.A. deserves to be rejected and in the conclusion the same is rejected with no order as to costs.


(A. S. Sanghvi)
Member (J)


(M. P. Singh)
Vice Chairman

MBT

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT JABALPUR.

O.A. No. 519/2001.

APPLICANT :

P. K. PATHAK

VS

RESPONDENTS:

UNION OF INDIA AND OTHERS.

I N D E X

Sr.No.	Description	Annexures	Page No.
1.	Original Application u/s 19 of the Administrative Tribunal's Act, 1985.		1 to 15
2.	Copy of the impugned order dated 7-5-2001.	A/1	16 to 18
3.	Copy of the Summon of Special Court (CBI)	A/2	19 to 19
4.	Copy of the order dt. 18-4-2000.	A/3	20 to 20
5.	Copy of the adverse ACR dated 8-2-99 of the applicant.	A/4	21 to 21
6.	Copy of the ACR of the applicant 96-97 & 97-98.	A/5	22 to 22
7.	Copy of the ACR for the year 98-99 of the applicant.	A/6	23 to 23
8.	Copy of the ad interim order dated 24-5-2000.	A/7	24 to 24
9.	Copy of the judgment passed in OA No. 455/2000.	A/8	25 to 35
10.	Copy of the ACR dated 11-7-2000 for the year 99-2000.	A/9	36 to 36
11.	Copy of the certificate dated 26-1-99 of the applicant.	A/10	37 to 37
12.	Copy of the representation of the applicant.	A/11	38 to 40

Jabalpur,
Dated : 29 / 8 / 2001.

(SUJOY PAUL)
COUNSEL FOR THE APPLICANT.

Presented on... 1/8/01
by Sbrl. A. N. A. 24
Patience Advocate, Respondent
Time... 10-10
Receptionist



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT JABALPUR

O.A. NO. 519/2001.

APPLICANT :

P. K. Pathak.

vs

RESPONDENTS :

Union of India and others.

APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNAL'S ACT 1985.

PARTICULARS OF THE APPLICANT :

P. K. Pathak, S/o
late S.D. Pathak,
Date of Birth 5-5-1946,
Upper Division Clerk,
P. NO. 701627,
Gun Carriage Factory,
J A B A L P U R.

PARTICULARS OF THE RESPONDENTS :

1. Union of India, through
its Secretary,
Ministry of Defence,
NEW DELHI.
2. Chairman,
Ordnance Factory Board,
10-A S.K. Bose Marg,
KOLKATA (W.B.).
3. General Manager,
Gun Carriage Factory,
JABALPUR (M.P.).

(1)

Particulars of the order/s against
which this application is made ; -



Paul