

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 29th day of April, 2011

Original Application No.48/2007

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Chittar Mal Meena
s/o Shri Ram Pal Meena,
r/o House of Pooran Mal Meena,
Near Surajpole Gate,
Jaipur presently compulsory retired
as L.S.G. (TBOP) from Jaipur General Post Office.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India
through the Secretary to the Govt. of India,
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi.
2. The Principal Postmaster General,
Rajasthan Circle,
Jaipur
3. Senior Superintendent Post Offices,
Jaipur City Dn.,
Jaipur
4. Senior Post Master,
Jaipur General Post Office,
Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

The present OA is directed against the impugned orders dated 14.9.2005 (Ann.A/1), dated 4.10.2005 (Ann.A/2) and 5.4.2005 (Ann.A/3).

2. The relevant facts, for deciding the controversy involved in this OA, are that the applicant appeared in the examination and passed the examination of Group-C post and after completing the training appointed as Postman. He was further granted Time Bound One Promotion (TBOP) after completing of satisfactory service in the pay scale of Rs. 4500-125-7000.

3. The controversy arose when the respondents initiated proceedings under Rule 48 of the CCS (Pension) Rules, 1972 and notice was issued that the applicant has completed 30 years of qualifying service and he shall retire after expiry of three months notice. As per consolidated instructions regarding premature retirement of Central Government Servants as mentioned in Govt. of India, Ministry of Home, Department of Personnel and Administrative Reforms OM No. 25013/14/77-Estt.(A) dated 5.1.1978 and Appendix-10 of CCS (Pension) Rules, 1972 the case of the applicant for review of his premature retirement, who was going to complete his 30 years of qualifying service during the quarter/period from 1.10.2004 to 31.12.2004 was received from



Senior Postmaster, Jaipur GPO vide his letter dated 13.7.2004 and the same was sent to the Principal Chief Postmaster General, Rajasthan Circle, Jaipur along with the cases of other officials in the quarterly statement pertaining to the review of premature retirement of Central Govt. Employees, who are either attaining the age of 55 years or completing 30 years of service during the quarter ending 31.12.2004. A committee was constituted for considering the case of the applicant for review of premature retirement along cases of other official. The Chief PMG, Rajasthan Circle being the Chairman of the Review Committee passed the order which reads as under:-

"The performance as reflected in confidential record of Shri Chittar Mal Meena, PA Jaipur City Dn., was found to be poor. His entire service record was considered and the Committee did not find him effective for continuance of the post, which he is holding. He will be retired after issue of three months notice by the competent authority under Rule 48 CCS (Pension) Rules, 1972. Before issuance of notice of premature retirement it should be ensured that the official has completed 30 years of qualifying service for pension."

4. The Appointing Authority as defined under Rule 48(3) of CCS (Pension) Rules, 1972 according to which "for the purpose of this rule the expression 'appointing authority' shall mean the authority which is competent to make appointment to the service or post from which the Govt. servant retires", and after ensuring completion of 30 years qualifying service, the applicant was served upon a three months notice in the prescribed proforma vide memo dated 5.4.2004 which was delivered to the applicant on the same date.

5. After receipt of three months notice the applicant preferred a representation dated 26.4.2005 to the Chief Postmaster General,



Rajasthan Circle, Jaipur which was received in the office of Senior Superintendent of Post Office (SSPO), Jaipur City Division, for comments and the same was returned to the Chief PMG, Rajasthan Circle, Jaipur along with brief history and para-wise comments vide letter dated 14/15.6.2005 and the same has been decided vide letter dated 20.6.2005 with the direction that "representation against the order of premature retirement lies to the Representation Committee of the Directorate and the official may be asked to represent to the Secretary, Department of Posts, New Delhi and forwarded the representation along with C.R. file, brief history and para-wise comments and information in the enclosed proforma and accordingly the Senior Postmaster, Jaipur GPO has been addressed to ask the applicant to represent to the Secretary, Department of Posts vide SSPO, Jaipur City Division letter dated 22.6.2005 but the same has been rejected vide order dated 14.9.2005 by the Secretary, Department of Posts, New Delhi.

6. The applicant preferred OA No.281/2005 before this Tribunal against the three months notice dated 5.4.2005 issued by the SSPO, Jaipur City Division. This Tribunal disposed of the aforesaid OA vide order dated 30.5.2006 with the observation that:-

"it is stated that the respondents have rejected the applicant's representation dated 27.6.2005. In this backdrop, learned counsel for the applicant seeks and is allowed to withdraw the OA with a liberty of challenge the orders passed by the respondents while rejecting applicant's representation. Now the applicant again filed the present Original Application with MA against the order dated 14.09.2005 (Annex.A/1) of Director General (Post) New Delhi by which rejecting his representation dated 27.6.2005 has been rejected."



7. Now by way of present OA, the learned counsel appearing for the applicant challenges the impugned orders Ann.A/1, A/2 and A/3 on the ground that the said orders have been passed by the incompetent persons and referred to Rule 2(j) of CCS (CCA) Rules which defines - Head of Office for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority means the authority declared to be the Head of Office under the General Financial Rules. He also referred Rule 9(2) of these rules, which thus reads:-

"(2) All appointments to Central Civil Posts, Group 'B', Group 'C' and Group 'D' included in the General Central Service shall be made by the authorities, specified in this behalf in the Schedule."

Further referred to Para 4(ii) of the schedule attached, which provides as under:-

"Part-III-Central Civil Services, Group 'C'

Serial Number	Description of service	Appointing authority	Authority competent to impose penalties and penalties which it may impose (with reference to item item number in Rule 11)
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.....

4. General Central Service Group 'C'

(i).....

(ii) Posts in non-Secretariat office other than posts in respect of which specific provision has been made by a general or special order of the President.

Head of Office

Head of Office



Where the confidential reports disclosed that the opinion of the reporting as well as the reviewing authority in the matter of the integrity of a Government servant was consistently in favour of the servant before or after a particular year for which an adverse entry was made, which was not made according to the specific instructions in that behalf and which must be deemed to be ignored by the reviewing authority when he gave the servant officiating promotions even after the entry, the order of competent authority prematurely retiring the servant in question was liable to be set aside."

As provided in sub-rule (iv) of Rule 11, there should be no premature retirement based on adverse entries in confidential records, which was earlier ignored for promotion. The condition precedent of making an order of compulsory retirement is the appropriate authority forming bona-fide opinion to do so in the public interest.

10. The respondents have placed reliance on Ann.R/2 and submitted that the case of the applicant was considered by the Committee constituted and it reveals that the applicant was not recommended for retention in service having considered overall ACRs of the applicant by the Committee. The gist of ACRs is also submitted by the respondents vide Ann.R/10, which reads as under:-

"ANNEXURE 'A'

Shri Chittar Mal Meena, Postal Asstt. Jaipur GPO

Date of Birth	02.11.1955	
Date of entry in service	07.12.1974	As Postman
Date of promotion as clerk	17.02.1982	

Particulars of penalties/adverse remarks

1974-1975	Satisfactory	
1975-1976	Satisfactory/Average	
1976-1977	Average	
1977-1978	Average	
1978-1979	Average	

7. Now by way of present OA, the learned counsel appearing for the applicant challenges the impugned orders Ann.A/1, A/2 and A/3 on the ground that the said orders have been passed by the incompetent persons and referred to Rule 2(j) of CCS (CCA) Rules which defines - Head of Office for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority means the authority declared to be the Head of Office under the General Financial Rules. He also referred Rule 9(2) of these rules, which thus reads:-

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Head of Office

Head of Office



After referring the aforesaid rules, submits that SSPO is not authorize to issue notice as he is not appointing authority. He also referred Rule 48(b) of CCS (Pension) Rules, which provides that at any time after a Government servant has completed 30 years' qualifying service, he may be required by the Appointing Authority to retire in public interest. He also referred to Rule 48(3) of CCS (Pension) Rules which provides that for the purpose of this rule, the expression 'Appointing Authority' shall mean the authority which is competent to make appointments to the service or post from which the Government servant retires.

8. Having considered the rules, schedule appended therewith and upon perusal of appointment order of the applicant, it reveals that appointment order of the applicant vide Ann.A/7 was passed by the SSPO and on recommendation of the DPC the applicant was placed in the higher scale along with other candidates vide order dated 22.9.2003 (Ann.A/8) by the SSPO, meaning thereby that SSPO being competent authority was also competent to issue order Ann.A/1, A/2 and A/3. Thus, we are not impressed with the submissions made on behalf of the applicant that SSPO is not competent to pass such orders.

9. The learned counsel appearing for the applicant also referred to Rule 11(iv) of CCS (CCA) Rules, which reads as under:-

“(iv) No premature retirement based on adverse entries in confidential records, which were earlier ignored for promotion-The condition precedent for making an order of compulsory retirement is the appropriate authority forming bona fide opinion to do so in the public interest.



Where the confidential reports disclosed that the opinion of the reporting as well as the reviewing authority in the matter of the integrity of a Government servant was consistently in favour of the servant before or after a particular year for which an adverse entry was made, which was not made according to the specific instructions in that behalf and which must be deemed to be ignored by the reviewing authority when he gave the servant officiating promotions even after the entry, the order of competent authority prematurely retiring the servant in question was liable to be set aside."

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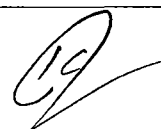
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1979-1980	Average	
1980-1981	Average	
1981-1982	Average	
1982-1983	Average	
1983-1984	Average	
1984-1985	Ordinary	Censure vide PM Jaipur GPO memo No.B 610 dated 28.7.1984 for absent without permission from 5.7.84 to 7.7.84
1985-1986	Ordinary	
1986-1987	Average	
1987-1988	Good	
1988-1989	Good	
1989-1990	Average	
1990-1991	Satisfactory	
1991-1992	Average	
1992-1993	Average/Good	
1993-1994	Good/Average	
1994-1995	Average/Poor	Not communicated
1995-1996	Average	Habitual late comer. Punished with stoppage of next increment for three months for wrong entry in the stock register vide Supdt. PSD Memo No.SD/B-66/95-96 dated 12.1.1996.
1996-1997	Average	
1997-1998	Ordinary	1.Withholding of increment for 6 months without cumulative effect vide Memo dated 30.9.1997. 2.Warned for availing leave without orders vide SSPOs Jaipur City memo dated 6.11.1997.
1998-1999	Average	His one increment was stopped for six months without cumulative effect vide SSPOs Jaipur City memo No.B-702 dated 29.9.1998
1999-2000	Average	His one increment was stopped for 2 years without cumulative effect vide SPOs memo No. CR 10/16/99-2000 dated 31.5.2000 for late attendance, leaving HQ without permission and letting out Govt. quarter to private person.
2000-2001	Average	
2001-2002	Average	1.Responsible for short account of RD deposit on the counter 2.Integrity doubtful, failed to take into correct amount of RD deposits. 3.Not disciplined. Attended office late. 4.Awarded penalty of



		reduction of one stage for one year vide PM Jaipur GPO memo No.1 2-9/1/SB/Disc.-1/02 dated 20.3.2002
2002-2003	Average	Habitual late comer Censured for late attendance at Raja Park PO During deputation vide Sr. PM Jaipur GPO letter No. B-448 dated 10.8.2002.
2002-2003	Good (31.12.02 to 31.3.03)	
2003-2004	Average	

A bare look to the overall assessment made in the ACRs reveals that from 1974-1975 to 1986-1987 the applicant has been rated as 'satisfactory', 'average' or 'ordinary' and only in the year 1987-1988 and 1988-1989 the applicant is rated as 'good' and thereafter again rated as 'average' and in the year 2001-2002 there is a remark with regard to doubtful integrity, as he failed to take in account correct amount of RD deposits. Thus, looking to the overall performance of the applicant, it has rightly been recommended by the Committee that the applicant is not fit for retention in service and consequent upon the recommendation, the impugned order of premature retirement has been passed by the respondents.

11. As regards the submissions made on behalf of the applicant that since the respondents have given promotion and after giving promotion the washed-off theory applies and the earlier ACRs cannot be considered for the purpose of premature retirement in the interest of public at large. To this effect the learned counsel appearing for the respondents placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of Pyare Mohan Lal vs. State of Jharkhand and Ors., reported at (2010) 10 SCC 693, more particularly para 18, which is reproduced as under:-



"18. Thus, the law on the point can be summarized to the effect that an order of compulsory retirement is not a punishment and it does not imply stigma unless such order is passed to impose a punishment for a proved misconduct, as prescribed in the statutory rules (See *Surender Kumar vs. Union of India*). The Authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, the authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said Authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee "rendered himself a liability to the institution", there is no occasion for the court to interfere in the exercise of its limited power of judicial review."

12. In view of the ratio decided by the Hon'ble Supreme Court that if there is sufficient material available on record to show that the employee rendered himself a liability to the institution, there is no occasion for the court to interfere in the exercise of its limited power of judicial review.

13. With regard to the washed-off theory, the learned counsel further referred to para 22 and 24 of the aforesaid judgment, which are reproduced as under:-

"22. In *Vijay Kumar Jain* this Court held that vigour or sting of an entry does not get wiped out, particularly, while considering the case of employee for giving him compulsory retirement, as it required the examination of the entire service records, including character rolls and confidential report. "Vigour or sting of an adverse entry is not wiped out". merely it related to the remote past. There may be a single adverse entry of integrity which may be sufficient to compulsorily retire the government servant."

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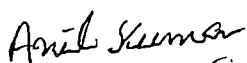
"24. In view of the above, the law can be summarized to state that in case there is a conflict between two or more judgments of this Court, the judgment of the larger Bench is to be followed. More so, the washed-off theory does not have universal application. It may have relevance while considering the case of government servant for further promotion but not in a case where the employee is being

assessed by the reviewing authority to determine whether he is fit to be retained in service or requires to be given compulsory retirement, as the Committee is to assess his suitability taking into consideration his "entire service record."

14. Thus, in view of the ratio decided by the Hon'ble Apex Court, the law requires the authority to consider the 'entire service record' of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement and we are not impressed with the submissions made on behalf of the applicant and the judgment dated 7.8.1985 relied upon by the applicant in the case of Hanuman Prasad Sharma vs. Union of India and others, is not applicable in the facts and circumstances of the present case.

15. Thus we are of the view that the orders impugned Ann.A/1, A/2 and A/3 do not suffer from any illegality, as such no interference whatsoever is called for by this Tribunal while exercising original jurisdiction and the OA being bereft of merit is dismissed.

15. The OA stands disposed of in the aforesaid terms with no order as to costs.


(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/