

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/01109/2016

Jabalpur, this Friday, the 06th day of April, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Sudarshan Prasad Verma, working as PA, S/o Late Shri Hajarilal, DOB : 01.09.1962, R/o-Village Manpur, P.O. Manikwar, Tehsil Raipur Kalchuriyan, District Rewa 486123 (M.P.) **-Applicant**

(By Advocate – Shri Vijay Tripathi)

V e r s u s

1. Union of India through its Secretary, Ministry of Communication & IT, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. Chief Post Master General, Madhya Pradesh Circle, Hoshangabad Road, Bhopal – 462012 (M.P.).
3. Director, Postal Services, Bhopal Region, Hoshangabad Road, Bhopal – 462012 (M.P.).
4. Superintendent of Post Office, Rewa Division, Rewa 486001 (M.P.) **- Respondents**

(By Advocate – Shri D.S. Baghel)

(Date of reserving order : 27.03.2018)

O R D E R

By Navin Tandon, AM.

Applicant is aggrieved by order dated 03.10.2016 (Annexure A-1), whereby he has been retired from service under

Rule 48 (1) (b) of Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as '**Pension Rules**').

2. Brief facts of the case are that the applicant was appointed as Postal Assistant on 31.12.1987. The applicant was given the benefit of second financial upgradation under the MACP scheme w.e.f. 01.09.2008, on completion of 20 years of service. On 03.10.2016 (Annexure A-1), the applicant was served with a notice by respondent No.4, wherein it has been stated that on completion of thirty years of service on 31.12.2016, he shall retire from service on the forenoon of 02.01.2017, by exercising the powers conferred under Rule 48(1)(B) of Pension Rules, 1972.

3. The applicant has prayed for the following reliefs:

“8.1 Summon the entire relevant record from the possession of respondents for its kind perusal;
8.2 Quash and set aside the order dated 03.10.2016 (Annexure-A/1) with all consequential benefits;
8.3 Command and direct the respondent authorities to permit the applicant to continue in service up to his normal/actual date of retirement i.e. 31.08.2022 along with all consequential benefits arising thereto;
8.4 Any other order/orders, direction/directions may also be passed.
8.5 Award cost of the litigation to the applicant.”

4. It has been submitted by the applicant that no Review Committee has been constituted to adjudge the suitability of the

applicant for further retention in service or the Committee has declared him as dead wood. He avers that the employee cannot be retired from service by exercising powers under Rule 48(1)(b) of Pension Rules, unless his suitability has been adjudged by the Review Committee. It has also been submitted that the applicant has never been communicated any adverse remarks in his APAR/ACR to represent himself. Therefore, the order dated 03.10.2016 is violative of principles of natural justice and is arbitrary, unjust and bad in law.

4.1 The applicant has further submitted that after receiving the order dated 03.10.2016 (Annexure A-1), he could not prefer representation within time. However, he submitted his representation on 21.11.2016, which is still pending consideration before the respondent authorities.

5. The respondents, by way of filing a detailed reply as well as additional reply, have submitted that in terms of order No.4-16/2015-SPG dated 09.12.2015 (Annexure R-1), a Review Committee has been constituted to consider periodical review under the relevant rules. The case of the applicant was considered by the Review Committee on 24.06.2016 along with 16 other personnel and his case was not recommended for further retention

in service by the Review Committee. A copy of minutes of the meeting has also been filed as Annexure R-2.

5.1 Regarding the representation of the applicant, it has been submitted by the respondents that the applicant has addressed his representation to an authority, which was not competent to decide the representation. Therefore, vide letter No.B-1-325/S.P.V/2016 dated 14.12.2016 (Annexure R-3), the applicant was advised that no action is possible on his representation, and therefore, he was advised to send his representation to “Representation Committee, in the Postal Directorate, New Delhi. However, no such representation was filed by the applicant.

5.2 The respondents aver that the applicant has been prematurely retired after following all the due process as prescribed under the rules.

5.3 It has been further submitted by the respondents that all the APAR grading for the year 2010-11, 2011-12 and 2012-13 was communicated to the applicant on 22.06.2016 and APAR grading for the year 2013-14 and 2014-15 was communicated to him as per fixed schedule. During last five years, i.e. 2010-11 to 2014-15, the numerical grading of the applicant for three years remained less than 4, which is “Zero” grading. The applicant has been awarded

number of punishments during his service period. Hence, he was not recommended for further retention in service.

6. Heard the learned counsel for the parties and perused the pleadings and documents annexed therewith.

7. The learned counsel for the applicant submitted that the copy of minutes of Review Committee (Annexure R-2) was made available to the applicant only along with the reply, and therefore, he could not submit his remarks about the points mentioned by the Review Committee. He also submitted that undue importance has been given by the report received from respondent No.4, which has not been made available to the applicant.

7.1 The learned counsel for the applicant has placed reliance upon the following three judgments of Hon'ble Apex Court to prove the point that not providing natural justice to the applicant is bad in law:

“(i) **D.K. Yadav vs. J.M.A. Industries Ltd**, (1993) 3 Supreme Court Cases 259.

(ii) **Kranti Associates Private Limited and another vs. Masood Ahmed Khan and others**, (2010) 9 Supreme Court Cases 496.

(iii) **Oryx Fisheries Private Limited vs. Union of India and others**, (2010) 13 Supreme Court Cases 427.

7.2 Learned counsel for the respondents argued that the applicant was already aware of his poor performance and his grading in APARs. He was also fully aware of all the punishments imposed on him. Therefore, no prejudice has been caused to the applicant.

8. We have given our thoughtful consideration to the entire matter and also gone through the judgment relied upon by the applicant.

9. It is undisputed that a Review Committee was constituted under the chairmanship of respondent No.2, as per Ministry of Communication, Department of Posts order dated 09.12.2015. In pursuance thereof, the case of the applicant, along with 16 other employees was put up before the Review Committee. The Review Committee, vide its meeting held on 26.06.2016, reviewed the cases of the officials, who had completed 30 years of qualifying service, and had not recommended the applicant for retention in service after considering his service record as well as APAR of the applicant. Thus, the contention of the applicant that no Review Committee was constituted before passing the order of premature retirement, is not supported by facts.

10. Rule 48 of Pension Rules prescribes the procedure for retirement of an employee on completion of 30 years' qualifying service. In Rule 48 (1) (b), the Appointing Authority has been delegated with the powers to retire an employee, who has completed 30 years' qualifying service. The same reads as under:

“48 (1) (b) he may be required by the Appointing Authority to retire in the public interest

Provided that-

(a) a Government servant shall give a notice in writing to the Appointing Authority at least three months before the date on which he wishes to retire; and

(b) the Appointing Authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice.”

11. In Appendix 5 of the Pension Rules, consolidated instructions have been prescribed regarding premature retirement of an employee. In Para (2) of Government of India's decision dated 23.10.1970, attached with Appendix 5, it has been decided as under:

“(2) No show-cause notice necessary before a notice of retirement is issued; but reasons should be kept recorded in file.– It will be seen from the judgment of the Supreme Court in the case of Union of India v. Col. J.N. Sinha, Ex-Director (Selection Grade), Survey of India and another (not printed) that the Supreme Court had not only upheld the validity of FR 56 (j) but have also held that no show-cause notice need be issued to any Government servant before a notice of retirement is issued to him under the aforesaid provisions.

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It will be seen from the above observation of the Court that the Appropriate Authority defined in Note 1 below FR 56 should bona fide form an opinion that it is in the public interest to retire the officer in exercise of the powers conferred by that provision and this decision should not be an arbitrary decision or should not be based on collateral grounds. Accordingly, in every case where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule, the Appropriate Authority should record in the file its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule in the public interest. The order to be served on the Government servant would, of course be on the form prescribed for the purpose.”

A bare reading of the Government of India’s decision dated 23.10.1970, makes it clear that no show cause notice is necessary before issuing the notice of retirement. The Appropriate Authority should record in the file its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule in the public interest. The rule position makes it abundantly clear that

there is no necessity to issue show cause notice before a notice of retirement is issued, if it is in public interest to retire an officer.

12. It has been specifically stated in the reply filed by the respondents that service career of the applicant was full of punishments and the APAR gradings of the applicant were either ‘Average’ or ‘Below Average’ for most of his service tenure. In the minutes of Review Committee meeting held on 24.06.2016, in Annexure-B of the report, list of punishments and the grading awarded to the applicant from the date of joining has been mentioned. The Review Committee before arriving to the conclusion, while not recommending the applicant for further continuation in service, as per the report received from respondent No.4, has stated as under:

“As per the report received from SPO’s Rewa Dn. Rewa, the official is inefficient, careless, unable to perform his duties properly, due to which the official was involved in various kinds of irregularities and was also responsible for loss of Public Money i.e. cash of Post Office in theft case, during his posting as SPM, Sirmore, SO (Rewa Dn.) on 23-04-12 in which Rs.1,19,123/- cash was stolen resulting in loss of Public Money.”

Thus, after overall assessment of the applicant's service career and looking to the APAR of the applicant from the date of joining, the Review Committee did not recommend him for further continuance in service. Therefore, the decision to retire the applicant prematurely, cannot be said to be based on collateral grounds, as it was on account of various punishments awarded to the applicant and his inefficiency to perform duties.

13. The learned counsel for the applicant has placed reliance on the decision of Hon'ble Apex Court in the case of **D.K. Yadav** (*supra*), wherein the issue before the Hon'ble Apex Court was that no opportunity of hearing was given to the applicant and without conducting any inquiry, punishment was awarded to the applicant, which is a mandate requirement of principles of natural justice. It is important to mention that premature retirement under Fundamental Rules 56 (j)/Rule 48(1)(b) of Pension Rules is not a punishment attracting Article 311 of the Constitution or the Rules pertaining to disciplinary matters.

14. In State of Gujarat v. Umedbhai M. Patel, AIR 2001

Supreme Court 1109, the Hon'ble Apex Court, while following the ratio laid down in **Baikuntha Nath Das v. Chief District Medical Officer, Baripada, (1992) 2 SCC 299**, has held in Para 7 as under:

“7. In Baikuntha Nath Das v. Chief District Medical Officer, Baripada, (1992) 2 SCC 299: (1992 AIR SCW 793 : AIR 1992 SC 1020 : 1992 Lab IC 945), following the decision in Union of India v. J.N. Sinha, (1970) 2 SCC 458 : (AIR 1971 SC 40 : 1971 Lab IC 8) this Court held thus (Para 32 of AIR SCW, AIR and Lab IC):

(i) An order of compulsory retirement is not a punishment. It implies no stigma or any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant, compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary – in the sense that no reasonable person would form the requisite opinion on the given materials; in short, if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks

lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) *An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. The circumstances by itself cannot be a basis for interference.”*

(emphasis supplied)

Thus, it is clear that an order of compulsory retirement is not a punishment and principles of justice have no place in the context of an order of compulsory retirement. Hence, we are not convinced with the submissions raised by learned counsel for the applicant that principles of justice have not been followed while issuing the order of compulsory retirement.

15. The law on the point can be summarized to the effect that an order of compulsory/premature 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. The authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry. The authority may desire to compulsorily retire an employee in public interest, if in his opinion 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.

16. Learned counsel for the applicant contended that no reasons have been assigned in the order dated 03.10.2016, and therefore, it has been submitted that the same is liable to be quashed being non-speaking. In support of his contention, he placed reliance on a judgment of Hon’ble Apex Court in the case of **Kranti Associates Private Limited** (supra), wherein the Hon’ble Apex Court has held that reasons have virtually become as indispensable a component of decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies. It was further held by the Hon’ble Apex Court that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak.

17. In the present case, criteria, procedure and guidelines have been prescribed for premature retirement of an employee. As per the Government of India’s decisions dated 23.10.1970 (quoted in preceding para), it has been made clear that while exercising the powers conferred by clause (1) (b) of Rule 48 of Pension Rules, the Appropriate Authority should bona fide form an opinion that it

is in the public interest to retire the officer and the decision should not be an arbitrary decision or based on collateral grounds. The Appropriate Authority should record in the file its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule in the public interest. The contents of the impugned order dated 03.10.2016 makes it clear that the same has been passed in prescribed proforma and in the public interest. Thus, there is no question that impugned order should have been a reasoned and speaking one.

18. Similarly, reliance placed by Shri Vijay Tripathi in the case of **Oryx Fisheries Private Limited** (supra) is also not applicable to the facts and circumstances of the present case, as the issue before the Hon'ble Apex Court was that, a show cause notice must reflect the charges and reasonable opportunity of making objection should be given to the delinquent. However, in the case on hand, there is no dispute that a notice under Rule 48 (1) (b) of the Pension Rules was served upon the applicant, which cannot be said to be a show-cause notice, as per Government of India's decision dated 23.10.1970.

19. We may note that the purpose and object of premature or compulsory retirement of Government employee is to weed out the

inefficient, corrupt, dishonest or dead-wood from the Government service. The right of the Government is well established in accordance with relevant service Rules. The scope and ambit of exercise of this absolute power depends on the provisions of Rules and it is always subject to Constitutional limitations. The public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing the services of those who are inefficient, dead-wood or corrupt and dishonest. Therefore, the rule contemplates premature retirement of the inefficient, corrupt or dead-wood, which would subserve the public interest.

20. Considering the totality of the case, we do not find any cogent reason to interfere with the impugned order dated 03.10.2016. Hence, the O.A is dismissed being devoid of merits. Consequently, the interim relief granted on 21.12.2016, stands vacated. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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