

PETITIONER:
JAYANTI KUMAR SINHA

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 16/09/1988

BENCH:
MISRA RANGNATH
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VENKATACHALLIAH, M.N. (J)

CITATION:
1989 AIR 72 1988 SCR Supl. (3) 5
1989 SCC Supl. (1) 1 JT 1988 (4) 77
1988 SCALE (2) 800

ACT:

Civil Services: Civil Services Regulation: Article 456(h)-Compulsory retirement-Scientist working in Defence Research Laboratory-Post in which appellant was working--Responsible one Poor performance cannot be tolerated-Retirement order held valid.

HEADNOTE:

The appellant who was a scientist in the Defence Electronics Research Laboratory was compulsorily retired from services by an order dated November 28, 1988 under Article 459(h) of the Civil Services Regulations. He challenged the retirement order before the Central Administrative Tribunal. It was contended on his behalf that he had a brilliant academic career and a clean record of service and that he had actually been interviewed for the post of Director during May-June, 1986, and that on account of the representation made by him in February, 1986 to the authorities for redressal of personal grievances wherein he had suggested improvements in the laboratory and pointed out the defective functioning of the Institution, the authorities developed bias against him. On behalf of the Department, these allegations were countered and the service records of the appellant were produced before the Tribunal. The Tribunal rejected the allegations of bias, mala fide and the appellants' claim that the order of retirement was based upon extraneous consideration, and dismissed the appeal.

In the appeal to this Court it was contended on behalf of the appellant, that the appellant had a clean service record and there was, therefore, no justification to prematurely retire him, and that it has to be assumed that the appellants' record of service was clean as he was not communicated any adverse entry in his character roll. The Department made available for inspection at the hearing of the appeal, the service records from 1973 till retirement, in support of its stand that the guidelines prescribed for review for deciding whether an officer should be prematurely retired had been strictly followed, and that the decision to retire the appellant was taken in a bona fide and legitimate manner and without any bias or prejudice and that there were several entries by the authorities in the character roll to

indicate deficiencies and drawbacks in the appellant's functioning.

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Dismissing the appeal,

HELD: 1. The post in which the appellant was working was a responsible one and poor performance could not be tolerated. [IID]

2. The appellant had served under four controlling authorities and three of them were Scientists of international repute. These Scientists appear to have made a fair assessment of the appellant's work and what is material is that there is unanimity in their conclusion. Years back one of the entries had indicated that the appellant had become 'dead wood', and he was also communicated the general disapproval of his method of working. [11A-B, 11D]

3. It cannot be contended in the instant case, that there was no communication of adverse entries because the entries were mostly based upon general assessment of the performance. Ordinarily when the entries relate to specific instance leading to adverse entries, the communication thereof is sent to the officer concerned with a view to providing an opportunity for improvement of performance. [11C-D]

4. The review proceedings were in consonance with the guidelines framed by the Government. From the proceedings of the Review Committee it is found that the Committee took up the review of 19 officers and found the appellant alone liable for retirement. Even at Government level after the recommendation of the review committee, the report was duly scrutinised. [11D, 11F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 658 of 1988

From the Judgment and Order dated 18.2.1987 of the Central Administrative Tribunal Hyderabad in OA No. 522 of 1986.

P.P. Rao and A. Subba Rao for the Appellant.

D.N. Dwivedi, Ashok K. Srivastava and C.V.S. Rao for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. This appeal by special leave and is directed against the decision of the Central Administrative Tribunal, Hyderabad bench, dismissing the claim of the appellant and rejecting his challenge to the order dated

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28th of November, 1986, retiring the appellant from service under Article 459(h) of the Civil Services Regulations.

The order of the retirement impugned in the proceedings was to the following effect:

"WHEREAS the President is of the opinion that it is in the public interest to do so.

Now, THEREFORE, in exercise of the powers conferred by Clause (h) of Article 459, of Civil Services Regulations, the President hereby retires Dr. J.K. Sinha, Scientist 'E', DLRL, Hyderabad with immediate effect, he having already attained the age of 50 years on 27th March, 1981. The President also directs that Dr. J.K. Sinha shall be paid a sum equivalent to the amount of his pay plus allowances for a period of 3 months calculated at the same rate at which he was drawing them immediately before his retirement".

The appellant was born on 27th March, 1931, and took the Master's Degree in Science in Physics in 1953 and obtained

Ph.D. in microwave Physics from the University of London in 1959. He also became a senior member of Institute of Electrical and Electronics Engineers, USA and a member of the Institute of Electrical Engineers, London. He acquired professional training in the Institute of Semi Conductor, Leningrad USSR, Leveder Institute of Physics, Moscow, and Rice University, Texas, USA. In August 1960, he was appointed as Senior Scientific Officer, Grade-I in the Defence Science Laboratory, Delhi and in 1969 was promoted as Principal Scientific Officer. In August, 1973, he was further promoted as Deputy Chief Scientific Officer and posted in Defence Electronics Research Laboratory, Hyderabad. While serving in the said post he was prematurely retired by the impugned order.

Before the Tribunal the appellant contended that he had a brilliant academic career and had a clean record of service; his research projects had been highly praised and appreciated and he deserved promotion to the post of Director (Scientist 'G'/'F'). The appellant was actually interviewed for the said post during May and June 1986. In February, 1986, he had made a representation to the authorities for redressal of personal grievances and while

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suggesting for improvement in the laboratory he had pointed out regarding the defective functioning of the Institution. The authorities developed bias against the appellant. This led to his not getting selected for the post of Director and ultimately to the making of the impugned order. These allegations were countered by the Department. Before the Tribunal the service records of the appellant were produced. The Tribunal rejected the allegations of bias and mala fide and the appellant's claim that the order of retirement was based upon extraneous consideration and dismissed the appeal.

The very contentions have been reiterated before us by Mr. Rao appearing for the appellant. The Department made available for inspection at the hearing the service records from 1973 till his retirement in support of its stand that the guidelines prescribed for review for deciding whether an officer should be prematurely retired had been strictly followed and the decision to retire the appellant was taken in a bona fide and legitimate manner and without any bias or prejudice.

Mr. Rao mainly emphasised that the appellant had a clean service record and, therefore, there was no justification to prematurely retire him. This submission is based upon the assumption that the appellant's record of service is clean as he has not been communicated any adverse entry in his character roll. Mr. Dwivedi for the respondent refuted the assumption by stating that there were several entries by the authorities to indicate deficiencies and draw-backs in the appellant's functioning and to support this submission he relied upon the service records. According to Mr. Dwivedi the entries are such that there was no obligation to communicate the same under the prescribed guidelines. We may refer to some of the entries now:

Year	Remarks
1975	"I have not been too impressed with this officer who does not seem to fit into DLRL and its work. I agree with Director DLRL and CCR&D(E) in their grading/remarks".
1976	"I have not been impressed with this Officer. I doubt if he fits in well with the work at DLRL. We

will have to see how to redeploy him. This is not easy in a post oriented budget system."

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- 1977 "I am in full agreement with Shriin his comments/assessment concerning this officer also with the grading of Reviewing Officer. He would be best suited for a preliminary Physics based and largely teaching oriented job. His promotion to DCSO and posting to DLRL was a direct result of the irrelevant system of Subject Pyramids, Vacancy based promotion defined by pure consideration of ACRs. Thus one gets square pegs in round holes. It is this system which has been changed recently after great effort. The position as earlier operated was unfair in the long term for the officers also, as in this case. In principle Dr. Sinha would be a good man in the right place."
- 1979 "An officer who thinks very much of himself but one who cannot claim to have done something substantial. I have suggested that he shifts to IAT but he has refused".
- 1980 "From what I know of him, he merely talks but does nothing very much. He refused to teach at IAT though qualified on papers. He is one of those whom we have to keep on as dead wood".
- 1981 "I agree. I have no high opinion of his work or as a man. The DRDO derives no benefit from him but our rules are such that we have to live with such people".
- 1982 "He is an average officer".
- 1983 "Performance is average and fair".
- 1984 "I am totally disappointed with the officer. My predecessors have also had the same feeling. I tried to see whether he could be fit into MTRC Bangalore. Even for this he has to appear for an interview. His performance as far as I can see is mediocre and I accept... 's observation. He had stated "he is in my opinion at the lowest limit of technical performance and managerial performance in DCRL Scientist 'E'."

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By the time the review was undertaken the report for the year 1985 was not ready mainly on account of the appellant not furnishing his self-assessment but the report which came latter indicated that he was graded as poor for that year.

From the records we find that on June 9, 1980, the head of the establishment had written to the appellant to the following effect:

"Reference your letter of 27th May, 1980. You will recall some time ago you sent me several communications and also saw me in person about your future interests I thought I had been able to give you a chance to expand on your interest, but you have turned it down. It is, therefore, not clear what exactly you want. If you want to take a dominant role in the microwave development and research and its related activities, this cannot be done purely on a personal basis; it should be a part of the overall programme of the Organisation. I am, therefore, requesting Shri Narayana Rao to use you in whatever way he deems fit until a suitable post is found for you."

On 17th April, 1986, the Director of Defence Electronics Research Laboratory, Hyderabad, had written a letter to the Director of Personnel, R & D Organisation, Ministry of Defence, New Delhi, about the appellant, a copy of which is

on record. The letter makes grievance that the appellant is non-cooperative in the matter of submission of his self-assessment for the year 1985. It further stated:

"I do not recommend him for promotion, due to the above mentioned remedial defects about which he has been told many time by me.

For many years he has not been putting in even the minimum amount of effort which is expected of a person of his level. With Government now extending the services of Scientists/Engineers upto 60 years, I feel that in the best interests of the Government, a careful study has to be made whether people of his calibre and capabilities are allowed to be continued in Government service.

I regard his overall performance is poor and he comes against the lowest 5% of the Sc.E in the laboratory".

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The appellant has served under four controlling authorities and three of them are Scientists of international repute. These Scientists appear to have made a fair assessment of the appellant's work and what is material is that there is unanimity in their conclusion. Years back one of the entries had indicated that the appellant had become "dead wood".

The Tribunal rightly rejected the plea of mala fides. Quite appropriately, Mr. Rao did not reiterate that contention. There could be no reason why everyone in the Institution should turn hostile to the appellant.

Mr. Rao had contended that there was no communication of adverse entries. Ordinarily when the entries relate to specific instances leading to adverse entries, the communication thereof is sent to the officer concerned with a view to providing an opportunity for improvement of performance. The entries which we have extracted above are mostly based upon general assessment of the performance. As we have already pointed out, he was communicated years back the general disapproval of his method of working. We are satisfied that the review proceedings were in consonance with the guidelines framed by the Government. The post in which the appellant was working was a responsible one and poor performance could not be tolerated. In *Shyam Lal v. State of U.P. & Union of India*, [1955] 1 SCR 26, a Constitution Bench had indicated that compulsory retirement did not involve any stigma or implication of misbehaviour or incapacity. Ever since then by a catena of decisions, the power of compulsory retirement and the procedure prescribed for taking of such action have been approved by this Court. It is unnecessary to refer to those cases.

From the proceedings of the Review Committee, we find that the Committee took up the review of 19 officers and found the appellant alone liable for retirement. The record of the proceedings shows that even at Government level after the recommendation of review committee, the report was duly scrutinised.

In our opinion, the Tribunal rightly came to the conclusion that the order of compulsory retirement was not open to challenge. The appeal is accordingly dismissed.

There would be no order for costs.

Appeal dismissed.