

UNION OF INDIA AND ORS.

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v.

SHRI DULAL DUTT

FEBRUARY 5, 1993

[LALIT MOHAN SHARMA, CJ, YOGESHWAR DAYAL AND
S. MOHAN, JJ.]

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Fundamental Rules—Rules 56(3) read with Rule 1802 (a) of the Railway Establishment Code, Volume II, 1987 Edition—Compulsory retirement order—Whether to be a speaking order.

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Civil Services—Indian Railway Stores Service—Compulsory retirement—Whether to be a speaking order.

Railway Establishment Code : Volume II, 1987 Edition—Rule 1802 (a), read with Rule 56 (J) F.R.—Compulsory retirement order—Whether to be a speaking order.

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On 12.6.1958, the respondent joined Indian Railway Stores Service as Class I officer. He was promoted as District Controller of Stores in 1974, as Additional Controller of Stores in 1980 and as Controller of Stores in 1982.

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Respondent was served a major penalty charge-sheet dated 5.12.1989 on the charge of finalisation of a tender case of 1983 and another major penalty charge-sheet dated 23.4.1990 on the charge of construction of a residential house during 1981-87 at high cost.

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By order dated 24.4.1990, which was served on the respondent on 28.1.1991, he was compulsorily retired. The delay in the service of the order was due to the court proceedings initiated against him.

Respondent challenged the order dated 24.4.1990 before the Central Administrative Tribunal.

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The Union of India submitted before the Tribunal that the right to retire a Government servant prematurely was an absolute one and the only requirement was that there should be the formation of an opinion; that in the present case, the opinion was formed in public interest and the

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A requirement of the Rule was strictly complied with.

The tribunal allowed the application against which the Union of India filed the present appeal by special leave.

Allowing the Appeal, this Court,

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HELD : 1.01. An order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. [861A-B]

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1.02. The Tribunal completely erred in assuming, in the circumstances of the case, that there ought to have been a speaking order for compulsory retirement. [860H]

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1.03. From the very order of the Tribunal it is clear that the Government had, before it, the report of the Review Committee yet it thought it fit of compulsory retiring the respondent. The order cannot be called either *mala fide* or arbitrary in law. [861C]

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Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another, [1992] 2 SCC 299; *R.L. Butail v. Union of India*, [1970] 2 SCC 876 and *Union of India v. J.M. Sinha*, [1970] 2 SCC 458, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 572 of 1993.

From the Judgment and Order dated 29.5.92 of the Central Administrative Tribunal, Calcutta Bench, in O.A. No. 455 of 1991.

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V. R. Reddy, Additional Solicitor General, Mrs. B. Sunita Rao and V.K. Verma for the Appellants.

G.S. Chatterjee for the Respondent.

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The Judgment of the Court was delivered by

YOGESHWAR DAYAL, J. Heard. Special leave granted. With the consent of learned counsel for the parties the appeal itself is being disposed of.

The brief facts leading to this appeal are as below :-

The respondent joined Indian Railway Stores Service as Class I Officer on 12th June, 1953. He was promoted to the senior scale as District Controller of Stores in 1974, as Additional Controller of Stores in 1980 and as Controller of Stores in 1982.

At the relevant time the respondent was posted as Controller of Stores, Metro Railway, Calcutta. A major penalty charge-sheet dated 5th December, 1989 was served on the respondent on the charge of finalisation of a tender case of 1983. Another major penalty charge-sheet was served on the respondent on 23rd April, 1990 on the charge of construction of a residential house at Salt Lake, Calcutta during 1981-87 at high cost.

The respondent was issued the impugned order dated 24th April, 1990 by the Joint Secretary (E), Railway Board, on behalf of the President, by which the respondent was compulsorily retired. The said order could be served on the respondent only on 28th January, 1991 in view of certain court proceedings initiated by him. Feeling aggrieved by the aforesaid order of compulsory retirement of the Railway Board the respondent preferred an application under Section 19 of the Administrative Tribunal Act, 1985 before the Central Administrative Tribunal, Calcutta. In the said application the respondent *inter alia* prayed for the following reliefs:-

"(a) an order directing the respondents to withdraw, revoke and cancel the impugned order dated 24.4.90/29.1.91 issued by the respondent No.2 and further directing the respondents to act in accordance with law.

(b) an order commanding the respondents to forthwith send unto this Hon'ble Tribunal the entire records of the case relating to the passing of the order retiring the applicant from service under rule 1802 (a) including the impugned order dated 24.4.90/29.1.91 for their examination and for quashing the same upon such

A examination for doing conscientious justice to the applicant.

(c) an order directing the respondents the continuance or retention of the applicant in service till he attains the age of superannuation on 31st July, 1993 with all consequential benefits."

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The appellants opposed the said application. It was stated on behalf of the appellants before the Tribunal that in memorandum dated 20th June, 1989 addressed to the respondent it was mentioned that the respondent had disposed of the tender expeditiously, the lowest offer which was filed, could have been availed of within the validity period offered by the firm and the railway would not have been forced to accept a higher rate and it also indicated lack of proper management of the purchase functions under the respondent. The aforesaid lapses on the part of the respondent were brought to the notice of the respondent so that he may be careful in future.

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Attention of the Tribunal was also drawn by the department towards a statement showing details of present and past vigilance cases involving the respondent. As regards the present case, there was a list of six, three of which were stated to be under investigation. These were regarding alleged favours shown to a firm and possession of disproportionate assets to the tune of over Rs. two lakhs. In the fourth case, the CVS (Central Vigilance Commission) advised initiation of a major penalty proceedings on 24th November, 1988. In the fifth case, CVS advised issue of recorded warning on 16th November, 1988. In the sixth case, CVS on reconsideration advised closure on 28th February, 1989. It was submitted before the Tribunal on behalf of the appellants herein that F.R. 56(J) and the corresponding Railway Rule 1802 (a) of the Railway Establishment Code, Volume II, 1987 Edition, under which the respondent was prematurely retired, are identical. The right to retire a government servant prematurely is an absolute one and only requirement is that there should be the formation of an opinion. And in the present case, the opinion has been formed in public interest and the requirement of the rule had been strictly complied with.

The Central Administrative Tribunal by the impugned judgment dated 29th May, 1992 allowed the application of the respondent holding that -

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passed have been brought out at paras 33, 34 and 35 of this judgment. It is abundantly clear from a perusal of these paragraphs that the high level review committee headed by the Chairman, Railway Board, unanimously recommended the retention of the applicant, firstly because his performance record had been quite good and secondly, because there was no proven vigilance case leading to punishment so far and the committee was of the opinion that the outcome of the more serious cases now pending against him should be awaited. This decision showed out application of mind by review Committee, which obviously felt that the disciplinary proceedings started against the applicant from the vigilance angle should first be concluded before any action was taken. The competent authority did not agree with the recommendation of the review Committee for the retention of the applicant. He was certainly entitled to do so but in arriving at any contrary decision, he should have recorded a speaking order indicating the reasons of his own opinion. In the departmental file contains only a single sentence recorded by the competent authority viz. 'he should be removed from service forthwith', we have no hesitation in holding that the decision of the competent authority was arbitrary and that it cannot be sustained."

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It is against the judgment that the present appeal has been filed.

We may mention that one of the departmental inquiries initiated vide Order No. E(O)1-89/PU-2/17 dated 11/12.10.90 has been concluded by the Commissioner for Departmental Inquiries vide his report dated 16th October, 1992. In this case the charge against the respondent was that "while functioning as Controller of Stores in Chittaranjan Locomotive Works, Calcutta during the year 1983 committed gross misconduct by his following actions which led to him showing favouritism to M/s. Bharat Traders, Calcutta in the award of contracts for the procurement of Yellow Dextrine on tender No. D2/SF/102/GB-10/4063:-

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(i) He passed orders for acceptance of a late offer of M/s. Bharat Traders, treating it as a single tender without obtaining prior approval of the General Manager;

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A (ii) Later he passed orders for awarding of contract to M/s. Bharat Traders without formal Tender Committee's recommendations;

(iii) He waived off the Security Deposit payment by M/s. Bharat Traders without obtaining finance's concurrence and for which the firm never requested;

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(iv) He misused purchase powers by exercising option clause, resulting in purchase of much higher quantity than what had been indented.

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By this aforesaid misconduct, Shri Dulal Dutt failed to maintain absolute integrity and devotion to duty and thereby contravened Rule 3(1)(i) and (ii) of the Railways Services (Conduct) Rules, 1966".

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The Commissioner for Departmental Inquiries while assessing the evidence in respect of the allegations against the respondent split up the charge into four ingredients as stated in paragraph 6.3 of the report. On ingredient No.1 the Commissioner for Departmental Inquiries held :-

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"Keeping in view the totality of evidence it is seen that the factual element in the ingredient No.1 of the charge has been corroborated. But in the instant case in the context of extremely critical situation and purchase of emergency nature, the CO's arguments and course of action have mitigated the alleged gravity of the charge. As the entire course of action specifically the adoption of second round of negotiation to neutralise the Finance objection vide Ex.S.6 was within the knowledge of AAO (S) vide Ex.S.7,

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no mala fides have been considered established against the CO. It is true that in a normal situation acceptance of revised offer after the rates are already known and the Tender Committee has placed their final recommendation is not in order. The prosecution argument on that score is quite acceptable. The prosecution further argued that the style of noting by the CO on Ex.S.4 indicated that the CO initially approved the TC proceedings. However, when subsequently Ex.S.5 was received the whole process of split orders started. Moreover, instead of ordering second round of negotiations the CO could have taken up with the GM personally for his approval for the single tender to

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avoid delay and tide over the emergency within the shortest spell of time.

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6.9. The issue is the course of action to be taken in view of the revised late offer and also the criticality of the stock position of the Yellow Dextrine. There may be a number of ways to tackle the problem. The CO has opted for a course of action analysed earlier and evident on record. Since the entire issue was within the knowledge of AAO (S) and the CO has made a detailed noting vide Ex.D.3 and S.7, no mala fide motive was established as already observed earlier."

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On ingredient No. 2 it was found as a fact that there was no formal Tender Committee recommendations.

On ingredient No. 3 it was found that no specific *mala fides* were established.

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On ingredient No. 4 the Commissioner for Departmental Inquiries found that the factual elements of some procedural shortcomings have been corroborated by the documents.

In the end the finding given was that certain procedural shortcomings were corroborated in the relevant documents; no *mala fides* against the CO or loss to the Railways have been proved.

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The law on the subject of compulsory retirement as recently laid down by this Court in the case of *Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another*, [1992] 2 SCC 299 was noticed by the Tribunal but erroneously distinguished it. In the case of *Baikuntha Nath* aforesaid this Court has exhaustively dealt with the entire case law on the subject and observed :-

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"An order of compulsory retirement 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. 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

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- A 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. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R. 56(j) or a rule corresponding to it."
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The court also observed :-

- C "An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour. *Principles of natural justice have no place in the context of an order of compulsory retirement.* Since the nature of the function is not quasi-judicial in nature and because the action has to be taken on the subjective satisfaction of the government, there is no room for importing the *audi alteram partem* rule of the natural justice in such a case."
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It was further observed by this Court that :

- E "However, this does not mean that judicial scrutiny is excluded altogether. While the High Court or the Supreme 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 material; in short, if it is found to be a perverse order. The remedy provided by Article 226 is no less an important safeguard. Even with its well known constraints, the remedy is an effective check against *mala fide*, perverse or arbitrary action."
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- H It will be noticed that the Tribunal completely erred in assuming, in the circumstances of the case, that there ought to have been a speaking order for compulsory retirement. This Court, has been repeatedly emphasising right from the case of *R.L. Butail v. Union of India*, [1970] 2 SCC 876 and *Union of India v. J.N. Sinha*, [1970] 2 SCC 458 that an order of a

compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. From the very order of the Tribunal it is clear that the Government had, before it, the report of the Review Committee yet it thought it fit of compulsory retiring the respondent. The order cannot be called either *mala fide* or arbitrary in law.

We are thus constrained to allow this appeal with costs and set aside the impugned order of the Tribunal dated 29th May, 1992 and dismiss the application of the respondent filed before the Tribunal against the impugned order of compulsory retirement of the respondent.

V.P.R.

Appeal allowed.