

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MRS.JUSTICE PUSHPA SATHYANARAYANA

W.A. No.414 of 2008

Col.A.G.Thomas

.. Appellant/Petitioner

-vs-

1. Union of India,
Rep. By its Secretary to Govt.,
Dept. of Defence (R & D) New Delhi.
2. The Director General - Research &
Development, Ministry of Defence,
New Delhi.
3. The Director of Personnel,
R & D Organisation,
Ministry of Defence, New Delhi.
4. The Estate Manager,
Estate Management Establishment,
Secunderabad.

.. Respondents

Appeal filed under Clause 15 of the Letters Patent of 1865 against the order dated 08.12.2006 passed in W.P.No.16723 of 1998 on the file of this Court.

This Writ Petition under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified mandamus calling for the records relating to order No.17713/RD/Pers-4-ps/76 dated 5.8.1997 of the respondents 1, 2 and 3 and quash the same and direct the respondents to permit the petitioner to serve DRDO till the normal retirement age of 57 yrs and also grant the benefit of the two years enhancement in the retirement age in accordance with the cabinet decision conveyed vide DOPT,OM.No.25012/2/97 Estt.(A) dated 13.5.1998.

For Appellant	:	Mr.Ashok Menon
For Respondents	:	Mr.Su.Srinivasan
		Asst. Solicitor General of India

J U D G M E N T
(Judgment of the Court was delivered by The Hon'ble Chief
Justice)

The appellant, aggrieved by the order of premature compulsory retirement, filed Writ Petition No.16723 of 1998. The appellant, in terms of the order of premature compulsory retirement dated 05.08.1997, was ordered to be relieved with effect from 31.10.1998 on attaining the age of 52 years. The appellant, at that stage, was holding the rank of Lieutenant Colonel.

2.The learned Single Judge has found that there is absence of evidence altogether to justify passing of the order of premature compulsory retirement. This was, in turn, predicated on an admission of the respondents in the affidavit that no disciplinary / vigilance case was pending or contemplated against the officer. The appellant also sought to substantiate his case on the basis of his dossiers and Annual Confidential Reports (ACRs) where two senior officers, Air Vice Marshal Deshpande and Rear Admiral Ajay Sharma from Air Force and Navy, certified the appellant as a competent person. The appellant also sought to rely upon the Annual Confidential Reports and the postings he held, which would not otherwise have been given to him but for his competency, i.e. (1) Head of General Staff Branch at IAT, Pune (1991-1994); (2) Deputy Technical Adviser (Defence) at HCI, London; and (3) Service Staff Officer to SA to RM for five long years.

3.The appellant claims to have obtained commending reports and ACRs during his stint abroad when Dr.P.C.Alexander was the High Commission of India, as also while working with Dr.Raja Ramanna.

4.The appellant was, however, denied his promotion in the year 1993 without assigning any reason when his juniors were promoted. A year later, however, the DRDO promoted him.

5.The appellant has expressed his suspicion that an endeavour was made to damage his career on account of the fact that while handling the high profile and high cost main Battle Tank - Arjun Project, the appellant had expressed frank and truthful opinions about the project not being professionally managed. Be that as it may, no adverse remark had been communicated to him either verbally or in writing. The only defence given in the counter-affidavit by the respondents is that on perusal of the records, the Selection Board opined that the services of the appellant were not to be continued.

6.The learned Single Judge noticed the total silence about any material adverse to the appellant and his confidential reports or otherwise and appreciated the submissions of the parties.

7.The Rules in question undoubtedly make provision for a compulsory retirement at 57 years with reviews at 52 and 55 years to determine the suitability of an officer for continuance beyond that date. It is, of course, not for this court to weigh the extent of the evidence available adverse to the appellant before the Selection Board, but there should be at least some evidence, however meagre it may be. Unfortunately, the present case falls within the narrow compass of total absence of any material which could justify such premature compulsory retirement. It cannot be a total subjective exercise without any material whatsoever. It is trite to say that the purpose of such provision is to weed out deadwood. But, there has to be something for that panel to be found. This would vary from case to case. In the present case, at no stage has any material whatsoever been produced to make out a case for premature compulsory retirement.

8.We may also examine another aspect that had there been any adverse entry or remark, that would logically have to be communicated giving an opportunity to the appellant to seek expunging of the same. There has been no such communication.

9.The learned Single Judge has recorded a finding that in the absence of any allegation of doubtful integrity, disciplinary proceedings pending or a vigilance case being contemplated and there being also silence about any alleged inefficiency of the appellant, the appellant could hardly be visited with the consequences of premature compulsory retirement.

10.Even if the Board had not opined the reasons, there should have been at least some reasons existing in record which could have persuaded the Board to come to the conclusion. Even that is absent. In fact, the learned Single Judge proceeded to issue general directions so that such cases do not occur in future causing irreparable harm.

11.It is while giving relief and setting aside the impugned order of premature compulsory retirement, with a direction that the appellant be treated as being in service without any break, that the learned Single Judge has pulled his hand to some extent by denying the appellant full monetary benefits and restricting the same to only 25% on the principle of 'no work no pay'. In fact, even costs have been awarded to the appellant.

12. We are unable to agree with the aforesaid reason of the learned Single Judge. The findings of the learned Single Judge against the respondents have not been assailed before us. The records of service of the appellant have not been produced. Interestingly, the respondents did file Writ Appeal No.46 of 2007, which is stated to have been dismissed for non-prosecution on 19.03.2008. Learned counsel for the respondents sought to plead that an application for restoration was filed by some counsel, but that they were unaware of the position of that application. On enquiry, it is informed to us that there is no such application pending in that matter. Thus, the merits of the case have become final.

13. The appellant having suffered so much at the hands of the respondents, having been deprived of his legitimate services at least for a period of five years, if not more, it would be a travesty of justice if he does not even get the emoluments which are due to him. The situation was not of the appellant's creation but of the decision of the Board of the respondents, which acted without any material. We are strengthened by the observations of the Hon'ble Supreme Court made in Punjab National Bank vs. Virender Kumar Goel & Ors., (2004) 2 SCC 193, where a specific plea raised in this behalf in a similar situation was met with rejection and in fact, reinstatement was directed. As noticed above, the reinstatement is not a possible relief in the present case. The appellant has, in fact, even lost out all opportunities of further promotion and a plea during the course of arguments advanced by the learned counsel for the appellant has been that even this should have been compensated as his juniors were promoted. But then, this is not a ground raised in this appeal. At request of the learned counsel for the appellant, we make it clear that if the appellant wants to seek any such further relief and that is permissible in law, it would be open to the appellant to do so since we have not dealt with the issue, restricting it to the existing grounds of appeal.

14. We are, thus, of the view that the impugned order of the learned Single Judge is not sustainable to the extent it seeks to restrict the monetary benefits to only 25%. The appellant, in fact, has raised a specific plea that the effect of restricting the amount would be that the benefits would be lower than what the appellant was receiving by way of pension and he could not be placed in a position worse than in which he finds himself otherwise. Thus, to that extent, the impugned order is set aside directing 100% benefit to be given to the appellant. The balance amount be remitted to the appellant within six (6) weeks as prayed for.

15.Writ Appeal is, accordingly, allowed to the extent indicated above, leaving the parties to bear their own costs.

sra

-s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Govt.,
Dept. of Defence (R & D)
New Delhi.
 2. The Director General - Research &
Development, Ministry of Defence,
New Delhi.
 3. The Director of Personnel,
R & D Organisation,
Ministry of Defence, New Delhi.
 4. The Estate Manager,
Estate Management Establishment,
Secunderabad.
 5. The Cabinet Secretary,
Union of India, New Delhi.
 6. The Principal Secretary to
His Excellency, the President of India,
New Delhi.
 7. The Secretary to Prime Minister's Office,
New Delhi.
- + 1 cc to M/s.SU.Srinivasan, Asst. Solicitor General of India SR
5202
- + 2 ccs to Mr.Ashok Menon Advocate SR 5077

ca(co)
prk23/2

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