

Mr. Jitendra Kumar Ojha Vs Union Of India

Court: Central Administrative Tribunal Principal Bench, New Delhi

Date of Decision: Feb. 15, 2019

Hon'ble Judges: L. Narasimha Reddy, J; Sh. Mohd. Jamshed, J

Bench: Division Bench

Advocate: D.S. Mahendru

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant joined the Indian Railway Traffic Service (IRTS) in the year 1990. Thereafter, he joined the Research & Analysis Service (RAS) of

Govt. of India in the year 1993. He handled several responsibilities that were entrusted to him over the period.

2. The applicant contends that his accomplishments in National Security and Governance, Counter Insurgency, Health as component of National

Security etc. were rewarded by various authorities. However, he stated that in the year 2012, he realized that there existed an all round threat to him

and wanted to have a respectful and graceful exit from the Organization. He is said to have addressed certain letters to the concerned Secretary in

this behalf. He contends that he was dissuaded by his superiors from taking VRS and in fact was persuaded to accept an assignment in National

Defence College(NDC) and that he completed the same. Even as recently as on 16.01.2018, he is said to have met the Secretary and renewed his

request to permit him to go on VRS.

3. The respondents issued an order dated 17. 01.2018 retiring the applicant from service, in exercise of powers under Clause(j) of Rule 56 of

Fundamental Rules on his attaining 50 years of age. It was mentioned that the applicant would qualify to be given pension and that a sum equivalent to

three months of pay and allowances shall be paid to him immediately before the retirement. The said order is challenged in this OA.

4. The applicant contends that his career was brilliant throughout and his ACRs were rated mostly as outstanding and despite that the respondents

have passed the order of compulsory retirement, almost as a measure of punishment. He submits that order is malafide in nature and that there was

absolutely no basis for the respondents to pass this order. The applicant placed reliance upon the ACRs for the period immediately preceding the

passing of the impugned order.

5. The respondents filed a counter affidavit opposing the OA. It is stated that the appointing authority is vested with the power under Clause(j) Rule 56

of Fundamental Rules, to retire an employee if it is felt that his continuance in the service would not be in the interest of the Organization. The various

facts pleaded by the applicant in his OA are denied with reference to each paragraph. It is also stated that the impugned order cannot be treated as a

measure of punishment and it was passed after perusing the entire service record of the applicant. It is also stated that the procedure prescribed in

Office Memorandum dated 11.09.2015, issued by the DOP&T was followed and that no illegality has crept in the proceedings.

6. The OA is argued by the applicant in person. The arguments on behalf of the respondents are advanced by Shri D.S. Mahendru, learned counsel.

7. The duties that were discharged by the applicant in RAS are of typical and complicated nature. The record discloses that at various points of time

his work was appreciated by the authorities at different levels. However, by its very nature the service of an officer in RAS has its own graph. The

ups and downs occur more on account of the satisfaction or otherwise of the officer himself than due to any external factors.

8. In the words of the applicant himself, he did not feel like continuing in the organization after 2012. In para 4.7, he stated as under:-

“4.7 It is submitted that by 2012 the applicant had realized, that his career in the respondent's organization was over and there existed a serious

all round threat to him if he stepped out abruptly. However, having invested the best years of his life in the organization, the applicant wanted to exit on

a pleasant and graceful note. In that regard the applicant addressed the letters dated 21.10.2014, 28.06.2017 and 21.09.2017 to the Secretary(R). The

first letter of 21.10.2014 contains comments of the then Secretary (R) and the second letter dated 28.06.2017 was duly acknowledged by his staff

officer. While seeking to exit the organization, the applicant did not wish to desert a position of responsibility. The then Secretary(R) in 2014 inveigled

the applicant to stay focused on the important task of Training and despite his persistent pleas for permission to proceed on VRS, he was nominated to

the NDC in 2016. As soon as he completed the NDC course, his request for 45 days leave was turned down and he was hurriedly posted in a position

of responsibility that involved heavy workload and tremendous responsibility. Any attempt to abruptly quit those assignments in the midst thereof would

have amounted to desertion and wasting the tax payer's money and trust. Consequently, the Applicant decided to continue serving for at least one

more year before quitting service. His intention to eventually exit had been amply informed to all concerned as also his request for necessary support

for a smooth release from service. He had clearly stated this in his letters dated 28.06.2017 and 21.09.2017 to the Secretary (R) as well as in an

earlier letter dated 10.02.2017 addressed to the Special Secretary. However, his representation dated 21.09.2017 and other requests were

peremptorily rejected by the respondent vide letter dated 26.0.2017.Ã¢â¬â¢

9. He continued his effort to move out of the organization by addressing letters at a subsequent stage also. Last of such effort was by meeting the

Special Secretary personally. Para 4.9 of the OA reads as under:-

Ã¢â¬â¢4.9 That on 15.01.2018, the applicant had also approached Special Secretary citing his unstable health, irregular blood sugar, intestinal and kidney

health issues and requested for long leave before putting in his papers for VRS. In response, the Special Secretary, advised that unless immediate

hospitalization was necessary, the applicant should continue with his duties until mid-February, 2018, when a substitute was expected to join. Given his

proclivity to attach greater importance to his duties, the applicant withheld his request for VRS and continued discharging his official responsibilities.

That the applicant had sought templates for VRS in December, 2017, from the concerned Under Secretary can be easily verified. The requests

aforesaid were entirely oral given the high degree of trust that the applicant assumed at all times within and among the officers of the organization.Ã¢â¬â¢

10. It is in this background that the impugned order dated 17.01.2018 came to be passed. It reads as under:-

Ã¢â¬â¢ Now therefore, in exercise of the powers conferred by clause (j) of Rule 56 of the Fundamental Rules, the President hereby retires Shri Jitendra

Kumar Ojha with immediate effect, he having already attained the age of 50 years qualifying for pension on the January, 17, 2018. The President also

directs that Shri Jitendra Kumar Ojha shall be paid a sum equivalent to the amount of his pay plus allowance for a period of three months calculated at

the same rate at which he was drawing them immediately before his retirement.Ã¢â¬â¢

11. Though the applicant made an attempt to contend that his case was not processed in accordance with the procedure prescribed for exercise of

power under Clause (j) of Rule 56 of Fundamental Rules, we do not find any pleading in that behalf.

12. The apprehension of the applicant is that the order may be treated as the one, reflecting the lack of confidence in him or attributing absence of

integrity. However, there is nothing in the order which can be construed as making even a remote suggestion to that effect.

13. The procedure prescribed by the DOP&T requires the case of this nature to be dealt with by a Committee, constituted for this purpose. The

committee examined the entire record and came to the conclusion that the applicant deserves to be retired.

14. In all fairness to him, they did not indicate any reason that warranted such a decision. Even in the counter affidavit they did not mention anything

that would adversely affect the respect or morale of the applicant.

15. Whatever may be the desirability or otherwise of continuing an officer even after he expressed his desire to move out, it is not at all advisable to

ignore such developments in an organization like RAS. Not only the full dedication to serve but also complete inclination to work is needed. Even the

slightest of disinclination to work in the Organization is prone to be detrimental to the Nation.

16. Though the applicant made a mention of his desire to take VRS, the same did not take place. He has been expressing his desire to leave the

organization on several occasions, that include his meetings with the superior officers. It is under these circumstances, that the impugned order came

to be passed. The applicant was extended all the benefits as though he retired on attaining the age of superannuation. In addition to that, the amount

equivalent to salary of three months was paid.

17. We are of the view that no prejudice can be said to have been caused to the applicant and that the impugned order does not suffer from any

factual or legal infirmity. To allay the fear of the applicant that it may be treated as the one expressing lack of confidence in him or pointing out

absence of integrity, we make it clear that the order shall not be construed as reflecting the lack of integrity or efficiency on the part of the applicant.

18. We do not find any merit in the OA. It is accordingly dismissed with the above observations. There shall be no order as to costs.