



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

FRIDAY, THE 7TH DAY OF JUNE 2024 / 17TH JYAISHTA, 1946

OP (CAT) NO. 207 OF 2023

AGAINST THE ORDER/JUDGMENT DATED 11.09.2023 IN OA NO.461 OF

2022 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONERS/RESPONDENTS IN THE O.A.:

- 1 THE UNION TERRITORY OF LAKSHADWEEP,
REPRESENTED BY THE ADMINISTRATOR, OFFICE OF THE
ADMINISTRATOR, LAKSHADWEEP ADMINISTRATION,
SECRETARIAT BUILDING, KAVARATTI,
UNION TERRITORY OF LAKSHADWEEP, PIN - 682555.
- 2 THE REVIEW COMMITTEE FOR LAKSHADWEEP ADMINISTRATION,
CONSTITUTED AS PER THE OFFICE MEMORANDUM DATED
28.08.2020 ISSUED BY THE MINISTRY OF PERSONNEL,
PUBLIC GRIEVANCES & PENSION, DEPARTMENT OF PERSONNEL
AND TRAINING, REPRESENTED BY ITS CONVENER/SECRETARY
(SERVICES), SECRETARIAT BUILDING, KAVARATTI,
UNION TERRITORY OF LAKSHADWEEP AT KAVARATTI,
PIN - 682555.
- 3 THE SECRETARY (SERVICES),
OFFICE OF THE ADMINISTRATOR, LAKSHADWEEP
ADMINISTRATION, SECRETARIAT BUILDING, KAVARATTI,
UNION TERRITORY OF LAKSHADWEEP AT KAVARATTI,
PIN - 682555.
- 4 THE DIRECTOR (SERVICES),
OFFICE OF THE ADMINISTRATOR, LAKSHADWEEP
ADMINISTRATION, SECRETARIAT BUILDING, KAVARATTI,
UNION TERRITORY OF LAKSHADWEEP AT KAVARATTI,
PIN - 682555.

BY ADV SHRI.SAJITH KUMAR V., SC,
LAKSHADWEEP ADMINISTRATION



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RESPONDENT/APPLICANT:

P. P. HAJAROMMABI,
AGED 56 YEARS
W/O. E. JAMALUDEEN, RESIDING AT DARUL HADI,
KAVARATTI, UNION TERRITORY OF LAKSHADWEEP, PIN -
682555
BY SRI.T.MADHU

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 29.5.2024, THE
COURT ON 07.06.2024 DELIVERED THE FOLLOWING:



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"C.R"

AMIT RAWAL & EASWARAN S., JJ.**OP (CAT) No. 207 of 2023****Dated this the 7th day of June, 2024****J U D G M E N T**Easwaran S.,J.

Whether an order passed under Rule 56(j) of the Fundamental Rules, 2017 read with Rule 48 of the Central Civil Services (Pension) Rules, 1972 could be judicially reviewed by the Central Administrative Tribunal, is the question that is raised before us in this Original Petition.

2. The applicant before the Central Administrative Tribunal challenged an order by which the applicant was prematurely retired from service on 3.8.2022. The applicant joined the service of the Lakshadweep Administration as a stenographer in the year 1990. Thereafter, the applicant was transferred to the office of the Deputy Collector. In 1996, the applicant was posted at Kochi, where she worked till 2000. Later, from 2000 to 2006, the applicant worked at Agricultural Department, Kavaratti. From 2007 onwards till 2011, the



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applicant worked at the office of the Enquiry Commissioner. Later, from 2011 to 2013, the applicant worked at PWD, Kalpeni, and later from 2013 to 2014, the applicant worked at the Office of the Superintendent of Police, Kavaratti. Still further, the applicant worked at the Industries Department from 2014 to 2015 and from 2015 to 2019 she worked at LPWD, Kochi. During November, 2019, the applicant was transferred and posted as Stenographer Grade-II (PA to DIG) at the Police Headquarters, Kavaratti. Before completing three years of service at the above station, the applicant was transferred to the office of LPWD, Amini as per Annexure-A2 order. Challenging the said order, the applicant preferred O.A.No.210/2022 and the said O.A. came up for hearing on 11.5.2022 and later adjourned to 25.5.2022. On 25.5.2022, it was adjourned to 16.6.2022. In the meantime, the applicant was served with Annexure-A1 order dated 3.8.2022 issued under Rule 56(j) of the Fundamental Rules, wherein she was prematurely retired from service. Challenge to the said order was basically directed on the ground of *mala fides*, especially



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when the petitioners/respondents were required to sustain the order of transfer which was challenged in O.A.No.210/2022.

3.The petitioners/respondents entered appearance and filed their reply statement primarily raising the contention that it was at the interest of the administration that the applicant was prematurely retired from service. It was further pointed out that on 26.8.2021, a Committee was constituted under Rule 56(j)/(l) of the Fundamental Rules and Rule 48 of the CCS (Pension) Rules, 1972 for deciding the representations of affected employees. The Committee scrutinised the representation of the respondent/applicant before the Tribunal and the minutes was recorded on 01.04.2022. Based on the tentative decision so arrived, the affected persons were given an opportunity to file representation as per Ext.R1(e) proceedings. The representation committee did not find any merit in the representation of the applicant dated 22.6.2022, and the decision/recommendation of the review committee held on 1.4.2022 was confirmed and accordingly, the order was passed. It was further contended that the order so passed



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could not be subjected to judicial review and it is the interest of the administration that the employee was sought to be prematurely retired.

4. Based on the pleadings on record, by the order impugned in this Original Petition, the Tribunal concluded that the order of compulsory retirement could not have been imposed against the applicant based on the Office Memorandum dated 28.8.2020 issued by the Government of India, Ministry of Personnel & Public Grievances & Pension. Reliance was also placed on the judgment of the Delhi High Court in **Ashok Kumar Aggarwal v. Union of India (WP(C) No.11177/2020 : 2021 SCC Online Del 4453)**. According to the Central Administrative Tribunal, the case on hand was liable to be distinguished with the judgment in **Ashok Kumar Aggarwal** (supra) especially when there were no grave cases against the applicant unlike the case in **Ashok Kumar Aggarwal** (supra). Therefore, the petitioners/respondents were directed to reinstate the applicant in service forthwith.



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5. We have heard Sri.Sajith Kumar V., learned Standing Counsel appearing for Lakshadweep Administration, and Sri.T.Madhu, learned counsel appearing for the respondent/applicant.

6. Learned counsel appearing for the petitioners, Sri.Sajith Kumar, contended that the Tribunal erred egregiously in allowing the Original Application, especially when the Tribunal could not have substituted the subjective satisfaction arrived by the Committee constituted for considering the case of a premature retirement of an employee under Fundamental Rule 56(j). He further contented that as per the report of the Committee, it was specifically found that the applicant had invited several departmental proceedings against her. He would take this Court to the recommendation of the Committee, which was placed on record as Annexures-R1(d) before the Central Administrative Tribunal. Referring to the minutes of the Committee, Sri.Sajith Kumar contended that there were at least four occasions where the applicant was proceeded departmentally and, on each occasion, she visited with various



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punishments. He would further invite our attention to the report, which specifically noticed the recent conduct of the employee. Therefore, according to Sri.Sajith Kumar, when cumulative assessment of the performance of the applicant was taken into consideration, the Administration was justified in ordering premature retirement of the employee by exercise of the Rules. Therefore, he contended that the subjective satisfaction of the Committee could not have been substituted by the Tribunal. Insofar as the representation submitted by the applicant for review of the decision is concerned, it is pointed out that no sufficient materials were brought on record to deviate from the recommendations of the Committee. Therefore, according to him, the Original Application was not liable to be allowed.

7. On the other hand, learned counsel appearing for the respondent/applicant would place before us the judgment of the Hon'ble Supreme Court in **Captain Pramod Kumar Bajaj v. Union of India and Another [2023 KHC Online 6230]**. Our attention was invited to para 16 of the judgment wherein



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the Hon'ble Apex Court has quoted with approval, the judgment of the Supreme Court in **Allahabad Bank Officers' Association and Another v. Allahabad Bank and Others [(1996) 4 SCC 504]**. According to him, the order of premature retirement is based on a report, which would cast stigma on the applicant and therefore, when tested within the parameters laid down by the Supreme Court in the aforesaid judgment, the order of premature retirement has to necessarily fail. We were also appraised of Annexure-R1(b) Office Memorandum dated 28.8.2020, especially clause 10(iv) thereto. For the sake of convenience, the aforesaid clause is extracted below:

"10. Broad Criteria to be followed by the Review Committee :- The broad criteria to be followed by the Review Committee while making the recommendations are as follows:-

xxx xxx xxx

(iv) No Government servant should ordinarily be retired on ground of ineffectiveness, if, his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post, has been found satisfactory. There is no such stipulation, however, where the Government servant is to



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be retired on grounds of doubtful integrity. In case of those Government servants who have been promoted during the last 5 years, the previous entries in the ACRs may be taken into account if he was promoted on the basis of seniority cum fitness, and not on the basis of merit.”

It is the specific case of the respondent/applicant that her case would fit within the said exception, wherein no misconduct was alleged within the period of five years from the date of the last disciplinary proceedings.

8. We have considered the rival submissions raised across the bar.

9. In our considered view, the order of the Tribunal cannot be sustained for reasons more than one. Fundamental Rules, 2017 empowers the appointing authority to impose a premature retirement against an employee. Rule 56(j) of the Fundamental Rules is extracted below:

“**56(j)**. Notwithstanding anything contained in this rule, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:-



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- (i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;
- (ii) in any other case after he has attained the age of fifty-five years."

A reading of the aforesaid Rule gives unqualified right to the authority, if it is of the opinion that it is in the public interest to do so, to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice. Right of an employer to cause premature retirement of an employee is well founded. When such power is exercised, the scope of judicial review is limited and it is only permissible on the ground of non-application of mind, *mala fides* or want of material particulars. **[Pyare Mohan Lal v. State of Jharkhand And Others : (2010) 10 SCC 693]**.

10. In **State of U.P. v. Bihari Lal [1994 Supp (3) SCC 593]**, it was held that if the general reputation of an employee is not good, though there may not be any tangible material



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against him, he may be given compulsory retirement in public interest and judicial review of such orders are limited.

11. In yet another decision of the Supreme Court reported in **Jugal Chandra Saikia v. State of Assam [(2003) 4 SCC 59]**, it was held that the when Screening Committee which consists of responsible officers, who have assessed the entire service records and formed an opinion objectively as to whether any employee is fit to be retained in service or not, in the absence of any allegation of *mala fides*, there is no scope of judicial review against such orders. However, in **Baldev Raj Chadha v. Union of India and Others [(1980) 4 SCC 321]** the Hon'ble Supreme Court has said that the requisite opinion for retirement of a victim should be in public interest - not personal, political, or other interest, but solely governed by the interest of public service. Hence, naked and arbitrary exercise of power would be bad in law.

12. However going by the dictum laid down by the Supreme Court in **Pyare Lal** (supra) and in **Bihari Lal** (supra), we are of the view that that the Tribunal completely went



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wrong in having a judicial review of the assessment made by the Screening Committee and consequential order being passed. The contention of the applicant that it cast a stigma on her when visited with the order of premature retirement does not impress us, especially when the order at Annexure-A1 does not cast any stigma on the applicant. Still further, her contention based on the Office Memorandum dated 28.8.2020 is equally fallacious, especially when it does not *per se* apply to the case of the applicant. It is true that the Office Memorandum stipulates that no Government servant should ordinarily be retired on the ground of ineffectiveness, if, his/her service during the preceding 5 years or when promoted to a higher post during that 5 year period, service in the higher post is found to be satisfactory. The Office Memorandum, in our view, does not cast an obligation on the authorities preventing them from proceeding against an employee for premature retirement, if on a cumulative assessment his/her service is found to be unsatisfactory. Even if we apply clause 10(iv) as contended by the learned counsel for the respondent/applicant,



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we cannot ignore, with the same breath, clause (v) which provides consideration of the entire service records of a government servant at the time of review. Therefore, if the entire service record of the applicant is put to scrutiny by the Committee, then, it cannot be said under any circumstances that the Committee was misguided and that extraneous consideration fell into the hands of the Committee while recommending the case of the applicant for premature retirement. This being the position of law, when we analyse the order so passed by the Central Administrative Tribunal, we are afraid that we cannot subscribe to the findings of the Tribunal. In the order impugned, the Tribunal has specifically found that in the proceedings of the Committee there was no proper assessment or grounds existed in relation to her being found to be deadwood or being requested to be removed from the administration to improve performance or efficiency. At the risk of repetition, we reiterate that it was wholly outside the domain of the Tribunal to have undertaken such exercise. We are at pains to see how the Tribunal could undertake such



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exercise and proceed to find that there are *mala fides* on the part of the authorities. We are also surprised to note that even the applicant before the Tribunal had no such case. Read as may, we could not find any averment from the Original Application by which the applicant had raised grounds of *mala fides* in attack to the order of premature retirement. Even otherwise, no officer was impleaded in his personal capacity to sustain the plea of *mala fides*. Therefore, it is evidently clear that the Tribunal abdicated while considering the application filed by the respondent/applicant.

13. In so far as the contention of the applicant that the Supreme Court in **Captain Pramod Kumar Bajaj** (supra) absolute right of the Government to retire an employee could be found under the Rules, insofar as the 2nd requirement is concerned, i.e. in public interest, is lacking on facts of the present case, it is to be noted that the court cannot substitute the wisdom of the employer on a consideration of his/her efficiency bar or ineffectiveness beyond the prescribed age. It is further pointed out that prior notice of at least three months



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is also required for the outgoing employee before the Government could decide to retire him/her from service. However, we cannot subscribe to the argument raised by the learned counsel for the respondent/applicant especially when, the limitation of judicial power in this area is well known and our examination is confined to see whether there is material to see as to whether a rational mind would be conceivably satisfied that compulsory retirement of the officer concerned is necessary in the public interest. Moreover, the confidential reports are often subjective, impressionistic and must receive sedulous checking as the basis for decision making. The appropriate authority, nor the court, should take the decision even though there is a caveat to avoid misuse. We are also not impressed by the argument of the learned counsel for the respondent/applicant that the applicant had no disciplinary enquiry within a period of five years before her retirement.

The result of the discussion leads to an irresistible conclusion that the order of the Tribunal is unsustainable and requires interference in exercise of the powers of this Court



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under Article 227 of the Constitution of India. Accordingly, Ext.P1 order dated 11.9.2023 in O.A.No.461/2022 of the Central Administrative Tribunal, Ernakulam Bench is hereby set aside. The Original Petition is allowed. Original Application would thus stand dismissed. No order as to costs.

Sd/-
AMIT RAWAL
JUDGE

Sd/-
EASWARAN S.
JUDGE

jg



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APPENDIX OF OP (CAT) 207/2023

PETITIONER ANNEXURES

- Exhibit P1** A TRUE COPY OF THE JUDGMENT DATED 11.09.2023 IN O.A NO. 461/2022 OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
- Exhibit P2** A TRUE COPY OF ORIGINAL APPLICATION NO. 461/22 FILED BY THE RESPONDENT BEFORE THE HON'BLE TRIBUNAL ALONG WITH ITS ANNEXURES
- Annexure A1 THE TRUE COPY OF THE ORDER BEARING NO. F.NO.12/15/2022-SERVICES/1586 DATED 03/08/2022 ISSUED BY THE SECOND RESPONDENT.
- Annexure A2 THE TRUE COPY OF THE ORDER BEARING F.NO.12/11/2012 - SERVICES/883 DATED 29/4/2022 ISSUED BY THE FOURTH RESPONDENT
- Annexure A3 THE TRUE COPY OF THE COMPLAINT DATED 22/3/2022 FILED BY THE APPLICANT BEFORE THE FIRST RESPONDENT
- Annexure A4 THE TRUE COPY OF THE EXPLANATION NOTICE DATED 25/3/2022 ISSUED BY THE SUPERINTENDENT OF POLICE; KAVARATTI TO THE APPLICANT
- Annexure A5 THE TRUE COPY OF THE EXPLANATION DATED 30/3/2022 SUBMITTED BY THE APPLICANT AS AGAINST THE ANNEXURE A4 SHOW CAUSE NOTICE
- Annexure A6 THE TRUE COPY OF THE REPRESENTATION DATED 4/5/2022 SUBMITTED BY THE APPLICANT BEFORE THE THIRD RESPONDENT
- Annexure A7 THE TRUE COPY OF THE REPRESENTATION DATED 17/5/2022 SUBMITTED BY THE APPLICANT BEFORE THE HONOURABLE ADMINISTRATOR
- Annexure A8 THE TRUE COPY OF THE ORDER BEARING NO F.NO. 12/15/2022- SERVICES/1040 DATED 24/5/2022 ISSUED BY THE FOURTH RESPONDENT WHEREBY THE APPLICANT IS RETIRED FROM SERVICE
- Annexure A9 THE TRUE COPY OF THE ORDER DATED 16/06/2022 IN O.A. NO. 181/00283/2022 ON THE FILES OF THIS HON'BLE TRIBUNAL
- Annexure A10 THE TRUE COPY OF THE REPRESENTATION DATED 20/06/2022 SUBMITTED BY THE APPLICANT BEFORE THE SECOND RESPONDENT
- Exhibit P3** A TRUE COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS DATED 17.10.2022
- Annexure R1 (a) TRUE COPY OF THE ORDER ON F.NO.12/15/2022-SERVICES/1040 DATED 24.05.2022



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- Annexure R1 (b) TRUE COPY OF THE OM NO.25013/03/2019 -ESTT.A-IV DATED 28TH AUGUST,2020
- Annexure R1 (c) TRUE COPY OF THE ORDER F.NO.12/24/2020 - SERVICES(2)/1625 DATED 26.08.2021
- Annexure R1 (d) TRUE COPY OF THE MINUTES OF THE MEETING OF REVIEW COMMITTEE HELD ON 01.04.2022
- Annexure R1 (e) TRUE COPY OF THE F.NO.12/15/2022- SERVICES/1342 DATED 01.07.2022
- Annexure R1 (f) TRUE COPY OF THE REPRESENTATION DATED 22.06.2022 OF THE SMT. P.P. HAJAROMMABI
- Annexure R1 (g) TRUE COPY OF THE MINUTES OF THE REPRESENTATION COMMITTEE MEETING HELD ON 06.07.2022
- Annexure R1 (h) TRUE COPY OF THE ORDER F.NO.12/15/2022-SERVICES/1586 DATED 3.08.2022
- Annexure R1 (i) TRUE COPY OF THE TRANSFER POLICY OF THE ADMINISTRATION OF UT OF LAKSHADWEEP ISSUED VIDE F.NO.12/03/2012- SERVICES DATED 07.03.2012
- Annexure R1 (j) TRUE COPY OF THE ORDER F.NO.12/11/2012 - nSERVICES/883 DATED 29.04.2022
- Annexure R1 (k) TRUE COPY OF THE FINAL SENIORITY LIST OF VARIOUS GRADES OF STAFF CAR DRIVERS 2022
- Annexure R1 (l) TRUE COPY OF THE OM F.NO.12/61/2001- SERVICES (VOL.IV) (2)/1362 DATED 05.07.2022
- Annexure R1 (m) TRUE COPY OF THE REPORT OF LOCAL COMPLAINT COMMITTEE ALONG WITH THE MINUTES OF THE COMMITTEE MEETINGS HELD ON 09.04.2022 AND 11.04.2022
- Exhibit P4 A TRUE COPY OF THE REJOINDER DATED 18.01.2023 FILED BY THE RESPONDENT BEFORE THE HON'BLE TRIBUNAL IN O.A. NO. 461/2022**
- Exhibit P5 A TRUE COPY OF THE MEMO FOR PRODUCTION OF DOCUMENTS DATED 05.07.2023 ENCLOSING ANNEXURE R1 (M) TO ANNEXURE R1 (O) DOCUMENTS**
- Document No R1 (m) COPY OF THE OFFICE NOTE
- Document No. R1 (n) COPY OF THE REPORT OF THE LOCAL COMMITTEE
- Document No. R1 (o) COPY OF THE MINUTES OF THE LOCAL COMPLAINT COMMITTEE
- Exhibit P6 A TRUE COPY OF THE ENQUIRY REPORT UNDER RULE 14 OF THE CCS(CCA) RULES SUBMITTED BY THE INQUIRY AUTHORITY ON 27.02.2017 BEFORE THE COMPETENT AUTHORITY**