

CASE NO.:
Appeal (civil) 1334 of 2005

PETITIONER:
UNION OF INDIA & ORS

RESPONDENT:
CHANDER MOHAN TRIKHA

DATE OF JUDGMENT: 25/03/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO. 1334 OF 2005

Respondent, Shri Chander Mohan Trikha, was working as Scientist B, Terminal Ballistics Research Laboratory, Chandigarh. By an order dated 16/5/1991 passed in exercise of the powers conferred by Clause (h) of Article 459 of the Civil Service Regulations, he was compulsorily retired. The said order was passed on the basis of a recommendation by the Review Committee. Aggrieved thereby, the respondent preferred an original petition before the Central Administrative Tribunal. His original application was dismissed by the CAT on 1/4/1999. Aggrieved thereby, he preferred a writ petition before the High Court. The Division Bench of the High Court, by its impugned order, set aside the order of the CAT dismissing the original application. The High Court also set aside the order dated 16/5/1991 compulsorily retiring the respondent from service.

By now it is a well-settled principle of law that an order of compulsory retirement is not an order of punishment
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and, therefore, there is no question of violation of the principles of natural justice.

The High Court was of the view that the Review Committee had not considered the entire service record of the writ petitioner, the respondent herein, and on that ground the order of compulsory retirement was set aside. We have gone through the entire writ petition filed by the respondent before the High Court. There was no allegation therein of malafide. There was also no allegation that the entire service record was not placed before the Review Committee. In other words, there was not even a whisper in the entire writ petition that the Review Committee did not consider the entire service record of the respondent before recommending the case of the respondent for compulsory retirement. The High Court, in our view, was hence not correct to record a finding that the entire service record was not considered when that was not even pleaded. Hence, on that ground the order of compulsory retirement was wrongly nullified by the High Court.

Although no such allegation was made in the writ petition that the entire service record was not placed before the Review Committee, the counsel for the respondent contended at the time of hearing that the entire service record was not placed before the Review Committee and, therefore, the Review
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Committee recommended the case of the respondent for compulsory retirement without application of mind. Having regard to this submission, we directed the appellant to produce the entire record which was considered by the Review Committee. A perusal of the minutes of the Review Committee consisting of senior bureaucrats, namely, Secretary, Department of Research and Development and Joint Secretary, Ministry of Education clearly disclose that the entire service record of the respondent has been perused by the Committee. Although in the minutes the adverse remarks in the ACR of the year 1989 has been recorded, a bare perusal of the minutes of the Review Committee clearly discloses that the Committee had examined the entire service record of the respondent. Therefore, the contention of the counsel for the respondent and also the finding of the High Court that the Review Committee did not consider the entire service record of the respondent is not found to be correct. At the risk of repetition, we are also

of the view that since this contention was not taken by the respondent in the writ petition, the High Court ought not have made a roving enquiry and given a finding on a case which was not pleaded before it. The finding of the High Court, in our view, was completely outside the record and was not pleaded by the respondent.

By now it is also a well settled principle of law that in exercise of judicial review, the Court is not sitting as an4.

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appellate Court. Judicial review is against the decision making process but not against the order itself. The High Court, while sitting in judicial review, was not justified in making a roving enquiry and give a different finding as if the High Court is sitting as an appellate Court.

For the reasons afore-stated, the impugned order of the High Court is not sustainable in law. It is, accordingly, set aside. The appeal is allowed. No costs.