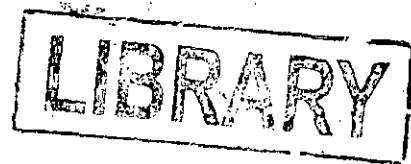


**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



O.A. 350/829/2019



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

G. Sree Harsha,
Aged about 55 years,
Son of Dr. G. Bhanu,
Permanent resident of 9-2-293/82/PN/9PN,
Prashasan Nagar Society,
Road No. 72, Jubilee Hills, Hyderabad,
Telangana – 500033,
At present working as Additional Director General
of Performance Management,
Customs, Central Excise & GST,
418-Bharat Kumar Bhawan, Anna Salai,
Chennai – 600 006
and Charge of ADG, Performance Management,
Customs, Central Excise & GST, at 4th, Floor,
Bambo Vila, 169-AJC Bose Road,
Kolkata – 700 069.

..... Applicant.

Versus

1. The Secretary to Government of India,
Ministry of Finance,
Department of Revenue,
Central Board of Excise & Customs,
North Block,
New Delhi – 110 001.
2. The Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi – 110 001.
3. The Under Secretary to Government of India,
Office of the Chief Vigilance Officer,
Central Board of Excise & Customs,
Department of Revenue,
Ministry of Finance,

6th Floor, Hudco Vishala Building
Bhikaji Cama Place,
New Delhi – 110 066.

..... Respondents.

For the applicant : Mr. L.K. Chatterjee, Counsel
Mr. K.K. Ghosh, Counsel

For the respondents : Mr. A. Roy, Counsel
Md. Shahan Ulla, Counsel

Reserved on : 23.09.2019

Date of Order : 15.1.2020

ORDER

Per : Bidisha Banerjee, Judicial Member

The applicant has questioned the propriety of the order dated 18.6.19 and has sought for the following reliefs:

"8.(i) To quash the Order No. F.No. C-50/48/2019-Ad.II dated 18th June, 2019 communicated by Respondent No.3 under Annexure-A/2 and consequently direct the Respondents to reinstate the applicant with full salary/pay and continuity of service and all his consequential service and financial benefits;

(ii) To pass any other order/orders as deemed fit and proper;

(iii) To allow this OA with costs."

2. The order impugned reads as under:

*F.No. c-50/48/2019-Ad II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs*

*North Block, New Delhi
Dated 18th June, 2019*

ORDER NO. 79/2019

*Whereas the President is of the opinion that it is in the public interest
so to do so:*



NOW THEREFORE in exercise of the powers conferred by clause (j) of rule 56 of the Fundamental Rules, the President hereby retires Shri Gaddala Sree Harsha (D.O.B 14.05.1964), Commissioner, with immediate effect, he having already attained the age of 50 years. The President also directs that Shri Gaddala Sree Harsha shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement.

Sd/-

(Kunwar Balwant Rao)

Under Secretary to the Government of India

3. The applicant has assailed the order dated 18.6.19 on the following grounds

inter alia:

"That the respondents are bound to consider the entire service records of the applicant prior to the exercise of the power conferred by FR56 (j) whereas the whole exercise would indicate that there was no material on the basis of which a reasonable opinion could be formed that the applicant had outlived his utility as a Government servant or that he had lost his efficiency and had become a dead wood, he was compulsorily retired merely because of the pending criminal cases initiated by CBI which are at a preliminary stage and where nothing adverse to your applicant has been established so far. Thus exercise of power available under FR 56 (j) by quoting public interest is not a bona fide exercise of power. Thus, the order being perverse and void ab initio the applicant should not be deprived of his livelihood."

"There can be no quarrel on the settled position of law that mere involvement of a person in a criminal case does not mean that he is guilty. The mere pendency of a criminal case also does not establish that the person is of doubtful integrity. In the circumstances is highly illegal, arbitrary, unjust and as such is liable to be quashed."

"There being no material/evidence before the appropriate authority inasmuch there were no adverse remarks in the character roll entries from the beginning when the applicant entered to service till date on the other hand all the APARs/ACRs will demonstrate that the applicant was awarded excellent remarks."

"Although the purpose of FR 56 (j) was to weed out worthless employees, if under the guise of "public interest", an order of premature retirement is made for any other purpose, it would be the surest menace to public interest and the order must fail for unreasonableness, arbitrariness and disguised dismissal. This position has been well settled in a plethora of judicial pronouncements. This being one such case, the impugned order under Annexure-A/2 is liable to be quashed."

"There is no bona fide opinion of the appropriate authority in the exercise of power under Rule 56 (j) of the Fundamental Rules as the authority concerned invoked the provision for collateral purpose, the order being punitive in nature. In fact there is no evidence in support of exercising the power."

4. Under similar circumstances, one Ashok Ratilal Mahida had preferred O.A.

836 of 2019 before this Tribunal.

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Having noted a decision in O.A. 418/19 by Cuttack Bench, the O.A. was disposed of on 06.09.2019 with the following direction:



"11. In the aforesaid backdrop, having observed that the applicant had failed to approach the appropriate authority in accordance with a statutory provision FR 56(jj) and had, without exhausting available statutory remedy, approached this Tribunal straightaway and having noticed the order passed by Cuttack Bench on identical grounds, as also having come to learn that applicant has already preferred a representation in terms of FR 56 (jj) (in the meantime) on 07.07.2019, i.e. after the Hon'ble High Court on 26.06.2019 raised the issues (as enumerated supra), we dispose of the O.A. granting liberty to the competent authority to consider the representation so preferred and dispose it of in accordance with law."

The order dated 06.09.2019 when assailed before the Hon'ble High Court was not interfered with. The Hon'ble High Court held as under:

" By the said order, the tribunal was pleased, first to dismiss the original application on the ground that the cause of action to initiate it had not arisen in terms of the judgment reported in (1989) 4 SCC 582 (S.S. Rathore -vs- State of Madhya Pradesh) and then, noticing that a review petition had been made by the petitioner under Section 56(jj) of the Fundamental Rules, was pleased to grant liberty to the respondents to dispose of the said review petition as well as granted liberty to the petitioner to proceed separately as against the disciplinary proceedings which was held to be unconnected with the subject matter of the said original application.

It has been clearly held in paragraphs 16, 18 and 20 in the judgment of S.S. Rathore (supra):

"16. The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available there under is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for government servants of the Centre and several States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallised on the line laid down under Section 20 of the Administrative Tribunals Act.

18. We are satisfied that to meet the situation as has arisen here, it would be appropriate to hold that the cause of action first arises when the remedies available to the public servant under the relevant Service Rules as to redressal are disposed of.

20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

In that view of the matter, it was not open to the tribunal to entertain the said original application before the order had been passed on the proceeding for review

which had been preferred by the petitioner without any leave from the tribunal but after having approached the tribunal against the original order of June 18, 2019 for compulsory retirement. Since according to the ratio of the said judgment [S.S. Rathore (supra)] cause of action would arise only after the order was passed on the review petition, the tribunal rightly decided, as it did and dismissed the original application on the ground of availability of alternative statutory remedy."

5. In the aforesaid backdrop, we discern that the present applicant has failed to approach the appropriate authority in accordance with a statutory provision FR 56(jj) and had^P, without exhausting available statutory remedy, approached this Tribunal straightaway.

6. Hence, we disposed^B of the O.A. with a direction upon the applicant to prefer an appropriate application under FR 56(jj) within 4 weeks from the receipt of the copy of this order, which if preferred shall be disposed of in accordance with law within 3 months of its receipt. No order as to costs.

We make it clear that we have not entered into the merits of this matter, hence all points are kept open for consideration.



(Dr. N. Chatterjee)
Administrative Member



(Bidisha Banerjee)
Judicial Member

drh