

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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D.A. 2164/1989

Date of decision : 08.02.1996

Hon'ble Shri N.V.Krishnan, Acting Chairman

Hon'ble Smt.Lakshmi Swaminathan, Member (J)

Shri V.R. Sagar
son of Late Sh.P.R. Sagar,
formerly posted as O.S.D. in the
rank of Dy.Commissioner of Income Tax,
in the O/O Chief Commissioner of
Income Tax(Admn.) Ayakar Bhawan,
M.K.Road, Bombay-400020
and currently residing c/o Sh.M.R.
Bhardwaj, Advocate D-7,
Hauz Khas, New Delhi-110016

... Applicant

(By Advocate Shri S.K.Bisaria)

Vs.

1. Union of India, through
Secretary to Govt.of India,
Dept.of Revenue,Ministry of Finance,
North Block,Central Sectt.,N/Delhi.
2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance, Deptt.of Revenue,
North Block, Central Sectt.,
New Delhi-1

(By Advocate Sh.V.P.Uppal)

... Respondents

O R D E R

(Hon'ble Smt.Lakshmi Swaminathan, Member (J))

Applicant has filed this application under
Section 19 of the Administrative Tribunals Act as he
is aggrieved by the order rejecting his representation
dated 15.3.1989 against his compulsory retirement
under F.R. 56(J) dated 19.5.1988(Annexure A-3).

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2. The relevant brief facts are that the applicant while working as Assistant Commissioner of Incometax at Bombay with the respondents was compulsorily retired from service under F.R.56(3) w.e.f. 20.5.88. Applicant has challenged this order of compulsory retirement in this application.

3. In O.A. 795/88, the applicant had challenged certain adverse entries in his ACRs. In this OA, judgement was delivered on 17.1.1989 and the same was allowed. This order of the Tribunal has become final.

4. In another OA 1836/87, the applicant had challenged his supersession in promotion from the post of Assistant Commissioner of Income Tax to that ^{of} Commissioner of Income Tax. The Tribunal vide its order dated 18.9.1989 allowed the application and directed the respondents to constitute a review DPC to reconsider the case of the applicant, as certain adverse remarks have been expunged. The respondents vide order dated 10.9.1992 promoted the applicant as Commissioner of Income Tax w.e.f. 23.4.1986. The applicant submits that since has been promoted as Commissioner of Income Tax after he was compulsorily retired from 29.5.1988, that order of retirement has to be quashed.

5. According to the applicant since adverse entries have been expunged for all purposes

and he has been promoted as Commissioner of Income Tax vide order dated 10.9.1992 w.e.f. 23.4.1986, there is no material against the applicant to justify his compulsory retirement from service w.e.f. 20.5.1988. Therefore, the main contention of Shri S.K.Bisaria, learned counsel for the applicant in this application is that ^{the} compulsory retirement order is malafide, without any substantial material and is therefore, liable to be quashed. He relies on the judgment of S.Ramachandra Raju v. State of Orissa (1994) JT (5) page 459 and submits that since he has been promoted with effect from 23.4.1986, no compulsory retirement order can be passed in 1988 on the basis of the record upto 31.3.1986.

6. Respondents have filed reply denying the above contentions. Shri V.P.Uppal, Learned counsel for the respondents submits that the events cited by the applicant in this OA do not in any way affect the order of compulsory retirement. He submits that the Review held on 9.11.90 DPC and subsequent promotion of the applicant to the post of Commissioner of Income Tax was done in compliance with the orders of the Tribunal. His contention is that while passing the order of promotion w.e.f. 23.4.1986, the respondents took into account the factors that were existing at that time. He further

submits that the decision about the doubtful integrity of the applicant on the relevant date i.e. 23.4.1986 had not crystallised and as such on that date the respondents could not have denied the promotion to the applicant/this ground. Respondents have also contended that there is sufficient material on record to justify the compulsory retirement order passed against the applicant. They submit that the order of compulsory retirement w.e.f. 20.5.1988 was passed on two grounds namely, doubtful integrity and incompetence. These facts were taken into account by the Screening Committee and considered carefully before coming to the conclusion for recommending his immediate retirement in public interest. Review Committee thereafter considered the recommendations of the Screening Committee and also recommended his compulsory retirement. Representation made by the applicant was again considered by /Representation Committee which also came to the conclusion that no change in the decision of Screening Committee and the Review Committee were required as there was enough material on record to justify the compulsory retirement of the applicant in 1988.

7. In the circumstances, learned counsel for the respondents states that the averments made by the applicant are baseless and therefore, OA should be

dismissed. On our directions, Shri V.P.Nopal, learned counsel for the respondents has also submitted the original records of the DPC meeting held in Oct., 1986, and of the held on 9.11.90 and the proceedings of Review DPC/Screening Committee and the proceedings held under F.R. 56(3) (F.No. A-32011/5/86-Ad VI, File No 32011/2/90 Act VI and F.No. Con/G/1924/Vin 30 (F 8011/5/88 V&L).

8. We have carefully considered the arguments of both the learned counsel for the parties and perused the records.

9. The Screening Committee held on 25th 23rd April, 1988 had recommended on the materials placed before it that the applicant should be retired under F.R.56.3-58 of the Pension Rules. They have stated that they have examined the A.C.R's of the last 5 years and the brief prepared for the consideration of the Screening Committee and the material in support of the brief before making the recommendations. In the

for consideration of
brief note prepared by the Screening Committee,
the analysis of five years A.C.Rs ^{which} has been given, may be
summarised as follows:

1982-83
1983-84

There is nothing to comment upon.

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1984-85	Rated as 'Very Good'
1985-86	Overall performance rated as 'Very Good'. The column relating to integrity was left blank by the Reporting Officer as the case registered by the C.B.I. was then under investigation.
20.8.1986 to 29.12.1986	Rated as 'inadequate' and adverse comments were made about his integrity.
30.12.86 to 31.03.1987	His over-all performance was rated as 'Very Good'.
10.	After considering the relevant record, the Screening Committee was of the view that the applicant had emerged as an Officer of doubtful integrity. The Review Committee held on 25.4.1988 had also examined the recommendations of the Screening Committee, ACRs and the other relevant materials, including the brief prepared for consideration of the Screening Committee. After such consideration, the Review Committee had also recommended that the applicant should be retired under FR 56-J in the public interest, both on the grounds of doubtful integrity and ineffectiveness. The contention of the applicant is that since the Review D.P.C. held on 9.11.1990 in pursuance of the judgement of this Tribunal dated 18.9.1989 had re-examined the character flaws and assessed him as 'Very Good', after also considering the allegations of doubtful integrity and incompetence considered by the Review Committee, and recommended him for promotion to the grade of Commissioner of Income Tax, the recommendations made in 1988 by the Screening Committee and the



Review Committee to retire him pre-maturely under F.R.56-J cannot now be considered valid.

11. We have seen the relevant ACRs for the 5 years considered by the 1985 DPC, i.e. from 1980-81 to 1984-85. For the year 1.4.84 to 31.3.1985, against the column 'Integrity' the comment is 'no complaint'; for the period 1.4.1985 to 31.3.1986, against the column 'Integrity' a secret note was attached referring to the FIR forwarded by the D.O. letter dated 26.11.1985 and explaining as to why this column has been left blank. The D.P.C. had earlier not recommended him for selection as Commissioner of Income Tax in 1986. This was challenged by the applicant in O.A.No.1836 of 1987 (V.R. Sagar Vs. Union of India and others) which was decided on September 18, 1989.

12. The Tribunal in its aforesaid judgement had observed that for the years 1980-81 and 1984-85 the remarks were reviewed by the Reviewing Officer. During these two years, the Tribunal observed that the Reporting Officer gave the applicant 'Very Good' in respect of Items No.9 and 10 respectively and 'good' in respect of Items No.4 and 8 respectively. It was further observed that since the criteria or yard-stick applied by the DPC in making the relevant assessment and awarding the grade was not before it, the Tribunal was not in a position to come to any conclusion as to the basis on which the applicant was given the grading 'Good' by the DPC notwithstanding that for two years he got 'Very Good' and for one year 'Good' and for others 'Very Good' reporting on many



items by the reporting officers. It was under these circumstances that the Review DPC was ordered for reconsidering the matter. The Review DPC was held in pursuance of the above order of the Tribunal on 9.11.1990.

13. The C.B.I. raid on the applicant's house took place on 14.10.1985, which has been referred to in the note of the Reporting Officer on the integrity column on 21.7.1986. The judgement of the Tribunal dated 18.9.1989 in OA 1836/87 refers to the ACRs for 1980-81, 1981-82, 1983-84, 1984-85. The DPC which had met earlier in September 1985 had considered a list of 126 officers, where applicant was at Sl.No.11, against 42 vacancies of 1985 and he was assessed only as 'Good'. In the note of the Review DPC, mention has been made to the judgement of the Tribunal dated 18.9.1989 and the reasons why the direction was given to the DPC to reconsider the case of the applicant "as if it was considering his case as on the date of the selection applying the same yardstick/criteria as adopted for the selection made in 1985." The Review DPC has stated as follows-

"In compliance with the directions of the Hon'ble Tribunal and keeping in view their observations, the Committee re-examined the character rools of Shri V.R. Sagar and assessed him as "Very Good". On the basis of this assessment the Committee recommended that the name of Shri V.R.Sagar may be included at S.No.8A below Shri T.S. Krishnamurthy and above Shri C.U. Choure in the panel recommended by the DPC which met on 23rd and 24th September, 1985 for promotion to the grade of Commissioner of Income Tax."

In the letter of the Ministry dated 4.6.90 addressed to the UPSC for holding the Review DPC in the case of the applicant, the background of the case has been given. It is also stated that the applicant was retired from service



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Under FR 56(J) in 1988 i.e. before the Review DPC was held.

Para 5 of this letter reads as follows-

"In this connection, it may be mentioned that Shri Sagar was earlier considered by the DPC held on 23rd and 24th September, 1985 but his name was not included in the list of names recommended for promotion. However, his integrity was certified at that time. Therefore, it may not be necessary to certify his integrity again for carrying out the review DPC for September 1985. This position may please be confirmed."

From the above facts, it is clear that Review DPC held in 1990 had recommended the applicant's case for promotion to the post of Commissioner of Income Tax taking into account the position regarding his integrity before September 1985. Further, in accordance with relevant DOP&T Instructions, the Review DPC has to consider only the ACRs of the applicant for the same period of 5 years as were assessed by the earlier DPC held in 1985 for the purpose of re-assessment, as ordered by the Tribunal. In the facts and circumstances of the case we are, therefore, satisfied that in assessing the ACRs of the applicant for promotion to the grade of Commissioner of Income Tax, the Review DPC did not take into account the remarks of his doubtful integrity recorded in July, 1986 as this has been reflected in the ACR for the subsequent period after 31.3.1985. Therefore, the Review DPC could not have denied him the promotion as Commissioner of Income Tax on the ground of doubtful integrity. This is a subsequent event. However, this does not prevent the competent authority from examining the entire records in 1988 when his case was taken up for consideration under FR 56(J).

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14. The Screening Committee and the Review Committee which had examined his case for compulsory retirement under FR 56-J had considered the subsequent relevant materials, including the ACRs for 1.4.1985 to 31.4.86 and 1.4.86 to 31.3.1987 wherein the columns on 'Integrity' he had got the above referred to remarks, and that 'he leaves much to be desired and cannot be relied upon.' It is clear from the minutes of the meeting of these Committees that the applicant had been recommended for compulsory retirement in public interest not only on the ground of ineffectiveness but also on the ground of doubtful integrity, which is borne out by the facts.

15. In view of these findings, we are unable to agree with the contentions of the learned counsel for the applicant that since the Review DPC recommended the promotion of the applicant in 1990 w.e.f. 23.4.1986, being its recommendations on all the ACRs and the records available placed before them whereby the report of the CBI raid and reports in ACRs regarding integrity ^{have also been considered, the} his case cannot be taken up under FR 56-J. When the DPC and Review DPC met in ~~October~~ 1986 and November, 1990, respectively, the relevant ACRs upto 1984-85 only were seen ^{which} did not contain any remarks regarding doubtful integrity of the applicant. Therefore, vigilance clearance was not withheld and the applicant was, therefore, given promotion at that time. However, when the Screening Committee and the Review Committee met in 1988, they had on the basis of the materials placed before them come to the conclusion to retire him in public interest not

only on the ground of ineffectiveness but on the ground of doubtful integrity. Therefore, even if it is considered that after his promotion retrospectively from 23.4.86 as Commissioner of Income Tax on the recommendations of the Review DPC in 1990, the ground of ineffectiveness ceases to have effect the decision of the competent authority to retire the officer pre-maturely under FR 56-J on the ground of doubtful integrity based on the records cannot be considered as illegal or against the Rules or relevant instructions.

16. Shri S.K. Bisaria, learned counsel for the applicant relying on the decision of the Supreme Court in S. Ramachandra Raju's case (supra) submits that since the applicant had been promoted w.e.f. 1986 on the basis of a Review DPC held in 1990, the order of compulsory retirement passed against him in 1988 w.e.f. 26th May, 1988 on the basis of the same reasons cannot be sustained and, therefore, the impugned order should be set aside. The decision of the Supreme Court in S. Ramachandra Raju's case does not at all support the arguments of the learned counsel. The Supreme Court held:

"It is thus settled law that though the order of compulsory retirement is not a punishment and the government employee is entitled to draw all retiral benefits including pension, the government must exercise its power only in the public interest to effectuate the efficiency of the service. The dead wood need to be removed to augment efficiency. Integrity in public service need to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence."

(Emphasis added).

From the above decision of the Supreme Court, it is clear that the power to compulsory retire the government servant can be exercised to ensure the efficiency and also to maintain the integrity in public service. Both these grounds are equally

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important for any public service. What is more important is that the Review DPC held in 1990 perused the ACRs upto 1984-85 only, as it was required to consider whether the applicant was fit for promotion when his juniors were promoted in April, 1986. The record perused by them is not the same as the record perused in 1988 by the Screening and Review Committees. The latter Committees have seen records beyond 1984-85 and found that the integrity of the applicant was doubtful and hence recommended his premature retirement. In the facts and circumstances of the case mentioned above, merely because the applicant got a promotion in 1986 by itself does not preclude the competent authority from exercising the powers of pre-mature retirement under FR 56-J after consideration of the entire service records of the applicant and coming to the conclusion that he lacks integrity. The ratio ins. Ramachandra Raju's case therefore, does not in any way assist the applicant, on the other hand the decision supports the stand taken by the respondents.

17. For the reasons given above, we do not find any legal infirmity in the impugned order compulsorily retiring the applicant from service w.e.f. 20.5.1988. The application, therefore, fails and is dismissed. No costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

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N. V. Krishnan

(N. V. Krishnan)
Acting Chairman

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