CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A./100/1835/2020

Date of reserve for orders: 07-12-2020

Date of Pronouncement of orders: 18-12-2020

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr.A.K.Bishnoi, Member (A)

Sh.Ashok Kumar Aggarwal,
Aged about 58 yrs, S/o Shri R.B.Aggarwal,
R/o 56, Akashnem Marg, DLF Phase-2,
Gurgaon, Haryana,
(E-mail: vista5kumar@gmail.com,8527833345). ….Applicant

(Through Shri Vikas Singh, learned senior counsel, representing Mr.S.K.Gupta, Counsel for the Applicant)

Versus

Union of India, through

1. Secretary
M/o Finance, Department of Revenue,
North Block, New Delhi.

(E-mail: rssecy@nic.in, 011-23092510, 23092810).

2. Chairman, Central Board of Direct Taxes,
M/o Finance, Department of Revenue,
North Block, New Delhi
(E-mail: chairmancbdt@nic.in, 011-23092648.

... Respondents

(Through Shri Tushar Mehta, learned Solicitor General of India representing Mr.Zoheb, Mr.Aman Mallik and Mr.Ravi Prakash, Counsel for the Respondents)

ORDER (ORAL)

Justice L. Narsimha Reddy, Chairman:

The applicant is an IRS officer of 1985 batch. In the year 1996, he was appointed as Deputy Director of Enforcement (Delhi Zone). He is said to have supervised investigation of cases, pertaining to violation of for Foreign Exchange Regulation Act (FERA), and in the process, he had to proceed against several influential persons, including the relatives of highly placed politicians. On 01.01.1998, the Enforcement Directorate (ED) conducted a search in the residential premises of an alleged hawala dealer by name Mr.Subhash Barjatya. The applicant is said to have lead the team. On finding several incriminating documents, Mr.Barjatya was arrested. The applicant states that he faced severe pressure from certain higher authorities of the E.D in relation to the said case; and that he submitted a representation in July 1998 to the Revenue Secretary in this regard.

2. It is stated that the CVC ordered a CBI inquiry, vide letter dated 28.12.1998, into certain matters pertaining to the search, and as a result, the applicant was transferred from the post of Deputy Director of Enforcement (Delhi Zone); and kept on compulsory wait. He contends that he had 5 outstanding ACRS between 1991 and 1996, but the 3 ACRS from 1999 onwards were not given any gradation at all, by the concerned authority, and on the other hand a secret note on him was sent. The CBI, in turn, is said to have registered a case against unknown officers of ED, with an intention to implicate the applicant, for the steps taken by him against some notorious economic offenders.

3. The applicant was placed under suspension on 28.12.1999. He mentioned various steps in relation to the criminal case registered by the CBI, including the issuance of a letter rogatory. The charge sheet in that case was filed on 28.06.2020. Shortly, thereafter a case of disproportionate assets of about Rs.12 crores, was registered against the applicant, on 26.11.2020.

4. The applicant filed OA.No.783 of 2000 challenging the order of suspension and the OA was allowed. He contends that though the suspension was set aside by this Tribunal and it was revoked, another order of suspension was issued on 25.04.2003. It is stated that the CBI harassed the family of the applicant and when the same was brought to the notice of the Hon'ble High Court, directions were issued, and as a result of which, FIRs were registered against two officers of the CBI.

5. On 28.07.2007, the competent authority accorded sanction for prosecution of the applicant in the criminal case. The applicant challenged the same by filing Criminal Revision Petition (Crl.RP) before the Hon'ble High Court of Delhi. The Crl. RP was allowed, setting aside the order of according sanction for prosecution of the applicant. It was also directed that no further steps shall be taken in the criminal case. An appeal, filed by the State in the Hon'ble Supreme Court is said to be pending.

6. The applicant filed OA.No.495 of 2012, challenging the order of suspension dated 25.04.2003, and it was allowed. It is stated that in the Writ Petition filed by the respondents challenging the order of the Tribunal, the Hon'ble High Court passed strictures; and that the Hon'ble Supreme Court has also taken serious exception for the attitude exhibited by the respondents, as regards the suspension.

7. The applicant contends that the suspension was ultimately revoked through an order dated 06.01.2014, but immediately thereafter he was transferred to Kolkata, in contravention of the transfer policy. Extensive reference is made to the proceedings that ensued in this behalf.

8. The applicant has also filed O.A.No.3971 of 2015 claiming the relief of promotion on par with his juniors. He contends that though he was promoted, he was posted as Senior Departmental Representative in the ITAT, Delhi, to work under his juniors and that no work was entrusted to him. He had also filed Writ Petition (Crl.) No.1401/2012 for quashing certain criminal cases, which are pending against him, and the same was allowed.

9. The applicant was issued two charge memos on 14.03.2014 under Rule 14 of the CCS (CCA) Rules. Challenging them, he filed three OAs in the year 2016. All the three OAs are said to have been allowed and when

the respondents filed Writ Petitions against them, the Hon'ble High Court of Delhi, dismissed them and the same result ensued in the SLP. It is stated that on 26.03.2019, the "sealed cover" adopted in the case of the applicant was opened and it emerged that the DPC found him unfit for promotion. The matter in relation to that is said to be pending before the Hon'ble High of Delhi. It is also stated that before the Hon'ble High Court on 27.05.2019, the respondents have assured that the case of the applicant would be examined in the light of the adjudication that has taken place in various cases, but hardly within two weeks, an order was passed on 10.06.2019, under Fundamental Rule 56 (j), retiring him on compulsory basis. This OA is filed challenging the order of compulsory retirement.

10. It is stated that initially the applicant challenged the order of compulsory retirement before the Hon'ble High Court of Delhi and thereafter, the Hon'ble Supreme Court; and when it was directed that he must seek the remedy before the Tribunal, he filed the OA before the Chandigarh Bench of the Tribunal, with a prayer to quash and set aside the order dated 10.06.2019 and to direct the respondents to reinstate him forthwith by awarding all promotions in terms of the judgment dated 02.02.2016 rendered by the Tribunal, which in turn was upheld by the Hon'ble High Court and Supreme Court. The respondents filed a Transfer

Petition under Section 25 of the Administrative Tribunals Act, for transfer of the OA to the Principal Bench. After hearing both the parties, the OA was transferred to the Principal Bench.

11. In view of the directions issued by the Hon'ble Supreme Court that the OA, if filed, shall be disposed of within four months, it was taken up on priority hearing.

12. Shri Vikas Singh, learned senior counsel for the Applicant, submits that the applicant is an honest and brilliant officer and it is evident from the fact that he was drawn to work in the ED at an early stage of his service. He contends that the exercise of power under FR 56 (j), resulting in passing of the impugned order against the applicant, is tainted with malafides. According to the learned senior counsel, the applicant was subjected to enormous litigation on account of the arbitrary and illegal steps taken by the respondents against him from time to time and when the applicant emerged successful at every stage, the respondents have chosen to invoke FR 56 (j), with an ulterior motive. He argued that the order of compulsory retirement is contrary to the undertaking given by the respondents to the Hon'ble High Court on 06.05.2019, and the extraordinary power was used in an arbitrary and high handed manner.

13. Learned Senior Counsel submits that even where the record of an employee permits of invocation of Rule 56 (j), it is required to be exercised within six months from the date on which the employee has crossed the

relevant age limit or length of service, and that in the instant case, it was invoked long after the applicant crossed the relevant age limit referred to under FR 56 (j). He submits that the reasons furnished by the committee

constituted for the purpose of reviewing the case of the officers, are totally unacceptable and the applicant was penalized just on account of his knocking the doors of the Courts and the Tribunal, that too when he emerged successful at every stage. He placed reliance upon the following judgments of the Hon'ble Supreme Court –

(i) *Baikuntha Nath Das & Another v. Chief Distt. Medical Officer*
(1992 (2) SCC 299)

(ii) *State of Gujarat v. Umed Bhai M. Patel*
(2001 (3) SCC 314)

(iii) *Swaran Singh Chand v. Punjab State Electricity Board*
(2009 (13) SCC 758)

(iv) *Bihar State Govt. Sec.Scl.Teachrs Assn. v. Ashok Kumar Sinha & Ors*
(2014 (7) SCC 416)

(v) *Yogesh M Vyas v. Registrar, High Court of Gujarat*
in Civil Appeal No.4514/2010, dated 03.09.2019

(vi) *Chandra Singh v. State of Rajasthan & Others*
(2003 (6) SCC 545)

He has also stated that once the respondents were not successful in their attempt to prosecute the applicant or to initiate disciplinary proceedings against him, they cannot take recourse to the extraordinary provision like FR 56 (j).

14. Shri Tushar Mehta, learned Solicitor General of India, appeared for the Respondents. He submits that as a matter of policy, and with an objective of ensuring transparency in the Income Tax Department, the

Government has reviewed the cases of quite a large number of officers in the IRS and depending upon the track record of the officers and of their utility to the department, it has been decided to exercise the power under FR.56 (j). He contends that the dual purpose of this exercise is that a) transparency and tranquility exists in the department; and (b) at the same time, the officers, who are sent out, are not put to any serious hardship. The applicant is said to be one of the officers, as regards whom, the committee made its recommendation for compulsory retirement. He contends that an order of compulsory retirement can, by no stretch of imagination, be treated as a punishment, and that the Hon'ble Supreme Court held so, repeatedly in many cases.

15. Learned Solicitor General submits that the track record of the applicant at least for the past 2 decades is such that there was hardly any contribution by him on the positive side; and the reasons apart, the voluminous litigation in relation to his service has not only kept the applicant, but also a substantial wing of the Government, busy only on that, even while such energies and resources were required to be utilized for important and sensitive matters in the department like Income Tax. He contends that no serious hardship can be said to have been caused to the

applicant on account of compulsory retirement, since he would be assured of all the benefits referable to ordinary retirement. He placed reliance on

the following judgments of the Hon'ble Supreme Court –

(i) *R.P.Kapur v. Union of India*
(1964 SC 787
(ii) *Vijay Kumar v. State of UP*
(2002 (3) SCC 641)
(iii) *Baikuntha Nath Das & Another v. Chief Distt. Medical Officer*
(1992 (2) SCC 299)
(iv) *Union of India v. Col. J.N.Sinha*
(1972 SCC 458)
(v) *Ramchandra Das v. State of Orissa & Others*
(vi) (1996 SCALE (5) 14)
(vii) *State of Punjab v. Gurdas Singh*
in Civil Appeal No.3668/1991, dated 31.03.1998.
(viii) *Nisha Priya Bhatia v. Union of India*
in Civil Appeal No.2365/2020 (2020 SC Online 801).

Written submissions are also made by both the sides.

16. The applicant joined the IRS in the year 1985. The very fact that he was drawn to the Enforcement Directorate discloses that he earned the confidence of the concerned authorities and that had a good track record. However, certain serious turns have taken place, within a few years from the date of his joining the Enforcement Directorate. Even according to the applicant, he handled many sensitive cases and in the process he faced serious pressure from his superiors in the department itself.

17. The raid said to have been conducted in a Hotel against the alleged economic offender has taken various turns. The applicant was sent out of the Enforcement Directorate, and he was even shown as a accused in the Criminal Case instituted by the CBI. The particulars furnished by us in the

introductory paragraphs present a highly condensed summary of events. The list of events filed in the OA itself runs to 70 pages. We have omitted to narrate in detail, many events, mentioned in the OA, but have taken note of them, to the extent, they are relevant to this case.

18. The issue in this OA is as to whether the order of compulsory retirement passed against the applicant is legal and valid.

19. There is no denial of the fact that the criminal cases and disciplinary proceedings were initiated against the applicant. All of them were stalled or set aside by the Hon'ble High Court and this Tribunal, in various proceedings. While in some cases, the judgments assumed finality, in some cases, the matters are still pending before the Hon'ble Supreme Court. Therefore, we did not feel the necessity of mentioning the events in detail.

20. Time and again the Hon'ble Supreme Court held that an order passed under FR 56 (j) cannot be treated as a punishment. It was also held that the principles of natural justice have no place in such proceedings.

Some important principles to be kept in mind, while dealing with cases of compulsory retirement, under FR 56 (j), were enunciated by the Hon'ble

Supreme Court, in *Union of India v. Col. J.N.Sinha* (1970 (2) SCC 458). Their Lordships held as under:

> *"9. Now coming to the express words of Fundamental Rule 56(j), it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule.' one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The 1st respondent challenged the opinion formed by the government on the ground of mala fide. But that ground has failed. The High Court did not accept that plea. The same was not pressed before us. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned rule 56(j) is not intended for taking any penal action against the government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Art. - 310 of the Constitution. Various considerations may weigh with, the appropriate authority while exercising the power conferred under the rule. In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity*

should be there. ……..It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interests of the public. 'While a minimum service is guaranteed to the government servant, the government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

21. In *Baikuntha Nath Das v. Chief District Medical Officer* (1992 (2) SCC 299), the principles were summed up as under:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

22. Same view was expressed in number of judgments rendered, over the time.

23. The verification, in matters of this nature, would be as to whether there existed any material at all to enable the appointing authority, to form the opinion, which of course, is nothing but subjective satisfaction. The Tribunal, however, cannot go into the adequacy of the material.

24. Secondly, though the guidelines issued for invocation of power under FR 56 (j), suggest that the exercise in this behalf must be undertaken six months before the officer attains the age mentioned in the rule, the timing is held to be directory and not mandatory. The invocation beyond the concerned age limit was not treated as fatal. It was also held that the intention underlying Rule 56 (j) is to get rid of the officers, who have proved to be of not much utility to the department.

25. Keeping in view, these broad guidelines and principles, we propose to examine the legality and correctness of the order of compulsory retirement passed against the applicant.

26. The applicant may have been a brilliant officer and may have commanded excellent reputation in the initial stage of his career. However,

he faced serious allegations and charges both criminal and disciplinary proceedings over the years. He remained under suspension between 1999 and 2014 i.e., more than 1 ½ decades.

27. We are conscious of the fact that the orders of suspension were set aside by the Tribunal as well as the Hon'ble High Court. We refer to this fact only from the limited point of view of the utility of the applicant to the department. Even after revocation of suspension, the proceedings multiplied in the context of posting or promotion. For all the practical purposes, the department did not have the benefit of the service of the applicant almost for two decades. The prime time of the applicant in the service was spent on litigation. Here again, we reiterate that the applicant was successful throughout, but we are referring to the said events from the limited point of view of the contribution of the applicant to the department. We may draw an analogy in this context. In several services, there exist provisions to the effect that an officer, who is not on his regular duty for a period exceeding 5 years, even on leave, shall cease to be in employment. The objective is to ensure that the department has the benefit of the service of the officer. Even if the non-functioning of the officer was not on account of any objectionable reasons, the paramount consideration is his being available to serve the department.

28. The learned Senior Counsel for the Applicant raised three principal grounds viz.,

(i) The order is tainted with malafides;

(ii) It is contrary to the guidelines issued as regards the timing for exercise of power under Fr 56 (j); and

(iii) The order was passed contrary to the undertaking given to the Hon'ble High Court of Delhi, by the respondents.

29. Coming to the first ground, an order of compulsory retirement can certainly be set aside, in case it is the result of the malafide exercise of power. Reference in this context can be made to the Judgments of the Hon'ble Supreme Court in -

Union of India v. M.E.Reddy (1980 (2) SCC 15)/1980 AIR 563

K.Kanda Swamy v. Union of India (1995 (6) SCC 162)

Nisha Priya Bhatia v. Union of India in Civil Appeal No.2365/2020.

30. In the context of examining the plea of malafides, an important aspect is that the one who alleges it must name the officers or authorities, who caused him wrong and make them parties, to the proceedings, by name. It is only after hearing the version of both the parties that a finding can be recorded in this behalf.

31. It is not the case of the applicant that any particular officer or authority in the hierarchy, had any prejudice or enmity against him and that led to passing of the order of compulsory retirement. The legal proceedings involving the applicant are spread over two decades. Authorities, and even

Governments changed. It is impossible to hold that the same tendency continued against the applicant throughout notwithstanding those changes.

32. Further, the occasion does permit the invocation of legal notice also. Once it is held that the State has the prerogative to invoke FR 56 (j), depending upon it, subjective satisfaction, the exercise in that behalf cannot be branded as malafide, in the absence of specific instances, personal or departmental prejudice and proof thereof.

33. So far as the second ground is concerned, it has already been mentioned that the timing for exercise of power is directory and not mandatory. In *Union of India v. Nasir Miya Ahmadiya Chauhan* (1994 Suppl.(2) SC 537), the Hon'ble Supreme Court did not approve the view taken by the Tribunal that the exercise of power under FR 56 (j), outside the time limit, would be fatal to the order passed thereunder.

34. Third ground urged by the learned senior counsel for the Applicant is that the impugned order runs contrary to the statement made or assurance

given by the respondents before the Hon'ble High Court of Delhi in certain proceedings. We cannot make any observation in this behalf. If any violation of the order passed by the Hon'ble High Court has taken place, law provides for remedy in that behalf. The Tribunal does not come into picture at all in such cases.

35. So far as the existence of material is concerned, we find that this is not a case where it is totally absent. It has already been mentioned that the utility of the applicant to the department was almost dismal, for the past more than two decades, reasons apart.

36. A question may be raised that when the officer is prevented from discharging duties for such a long period, can that factor be put against him. The answer is that the scrutiny is from the point of view of utility, even by ensuring that the officer gets, what is otherwise due to him on retirement. In addition to that, the issue is not one of dual between the officer and the administration much less that of winner and vanquished. Huge public interest is also involved.

37. Secondly, the applicant faced the criminal as well as departmental charges. It is true that both of them nipped, when they were buds. In the criminal case, it is almost one of acquittal or quashing, on technical grounds, and otherwise than on merits. If the instances of such nature are

to be viewed differently altogether in the context of maintaining an order of punishment under the conduct rules, they would not become totally irrelevant, while reviewing the case of an officer, with reference to FR.56 (j).

38. The situation may not have existed for imposition of penalty. However, the gist of judgments of the Hon'ble Supreme court on the subject is to the effect that the overall record of the employee can certainly be taken into account. At the end of the day, it is subjective satisfaction of the appointing authority, which in turn is not easily available for judicial review, compared to other administrative decisions.

39. A close scrutiny of the provisions under Para XXIV of the Constitution of India, in which Articles 308 to 314 occur; or the CCS (CCA) Rules or Fundamental Rules, would reveal that even while the several protections are accorded to the civil servants, the administration is conceded with the power to punish or dispense with the services of the employees depending upon the proof of acts of misconduct or on existence of material to show that it is not feasible to continue the employee in service. While holding of inquiry into the allegations of misconduct, is the norm that can be

dispensed with in exceptional cases covered by the 2nd proviso to Article 311 (2) (b) and the corresponding CCS (CCA) Rules.

40. The hardship caused to the civil servants on account of dismissal from service after an inquiry under Rule 14 of the CCS (CCA) Rules or by invoking the provisions akin to Article 311 (2), is phenomenal, if not colossal. The pension, which is almost in the form of estate, stands withdrawn. Other attendant benefits, which are provided as a reward for the service rendered by the employee for major part of his life are forfeited. In contrast, the compulsory retirement under FR 56(j) would have the effect of just advancing the age of retirement and nothing more. The State feels that it would be safer for it, in case the employee is not on its rolls for the remaining part of his service. Roughly stated the major punishments such as dismissal and removal are almost lethal weapons, whereas compulsory retirement is just a tranquilizer. Obviously for that reason, the Hon'ble Supreme Court had reduced the interference with such orders to the bare minimum. Exceptions are where order is tainted with malafides or there does not exist any material to warrant such a plea at all. Such grounds, however, do not exist in this case.

41. It is strongly urged that the grounds stated by the Review Committee are objectionable. According to the applicant, the committee took exception to the remedies availed by him before the Courts and the Tribunal. This may not be correct. The very fact that the respondents implemented every

order passed in favour of the applicant shows that they have full respect to such adjudication. Reference to the various cases filed by the applicant was only to take note of the turbulence, which they created in the department, than to the recourse to the remedy or the result thereof.

42. Viewed from any angle, we do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(A.K. BISHNOI)
MEMBER (A)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

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