

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.2990/2019

This the 22nd day of December, 2020

Through video conferencing

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Atul Dikshit, S/o D.P. Dikshit,
R/o D-II/347, Pandara Road,
New Delhi -110 003, Aged about 58 yrs,
(Group 'A') (Commissioner (Customs)-
Compulsorily Retired under FR 56 (j). .. Applicant

(Through Advocate : Mr. Ajesh Luthra, Counsel for the
Applicant)

Versus

1. Union of India, Through its Revenue Secretary,
M/o Finance, North Block, New Delhi-110 011.
 2. Chairperson, Central Board of Indirect Taxes & Customs,
Department of Revenue, M/o Finance, North Block,
New Delhi-110 011.
- ... Respondents

(Through Advocate: Mr. Ravi Prakash, Counsel for the Respondents)

ORDER (ORAL)**Mr. Justice L. Narasimha Reddy:**

The applicant is an Indian Revenue Service (IRS) Officer of 1988 batch. He held various posts in the Customs and Central Excise Department of Ministry of Finance. It is stated that the applicant was declared as the most meritorious officer in the years 2012 and 2013 and was also presented a Certificate of "Distinguished Public Servant" by the President of India in the year 2013.

2. The applicant states that in the year 2015, he was working as Commissioner at the Inland Container Depot (ICD), Tughlakabad and that the CBI registered a case against him on a request made by the Directorate of Revenue Intelligence (DRI) and that he was placed under suspension. The Trial Court is said to have acquitted the applicant, vide judgment dated 17.10.2017. A charge sheet was issued on 31.10.2017. OA No.1980/2018 filed by him, challenging the said charge sheet, was dismissed on 06.08.2018, and a Writ Petition (C) No.10435/2018 filed by him before the Hon'ble High Court of Delhi, is pending.

3. A criminal case was filed against the applicant on 05.09.2018 by invoking the provisions of the Prevention of Corruption Act, alleging that he possessed assets disproportionate to his known source of income. Thereafter, an order dated 15.06.2019 was passed against the applicant by invoking FR 56 (j) and retiring him compulsorily, from service. The

review submitted by the applicant was rejected on 17.09.2019. This OA is filed challenging the order dated 15.06.2019.

4. The applicant contends that there was absolutely no basis for the respondents to invoke FR 56 (j) against him. He submits that he had a meritorious career up to the year 2015 and that a criminal case, filed against him in the year 2015, ended in acquittal. He submits that the charge sheet issued against him on 31.10.2017, is on the same allegations as contained in the criminal case, and that it was purely a vindictive step. He further submits that the charge memo issued on 05.09.2018 was based upon imaginary valuations of the properties held by him. According to him, the respondents have taken recourse to FR 56 (j), without awaiting the outcome of the disciplinary proceedings pending against him.

5. The respondents have filed a detailed counter affidavit. It is stated that the applicant has allowed duty drawback to certain firms, with exaggerated value, and inspite of the alert sounded by the DRI, he allowed the departure of the goods and thereby the State incurred loss, to the tune of Rs.28 crores. The respondents contend that the acquittal of the applicant was purely on technical grounds and that as of now two charge memos are pending against him with serious allegations.

6. By referring to various judgments of the Hon'ble Supreme Court, they contend that the order of compulsory retirement is not a punishment and that there exist an abundant material against the applicant justifying the invocation of FR 56 (j).

7. Shri Ajesh Luthra, learned counsel for the Applicant, elaborated the contentions raised in the OA. He submits that the applicant was so meritorious that he was also honoured with a Certificate issued by the President of India. He contends that though a criminal case was registered against the applicant in connection with allowing a duty drawback, the same ended in acquittal and that the charge memo issued on the same allegation cannot constitute the basis for passing the impugned order. He further submits that the issuance of another charge memo on 05.09.2018 and passing of the impugned order, are all acts tainted with malafide intention and the impugned order cannot be sustained in law.

8. Shri Ravi Prakash, learned counsel for the Respondents, on the other hand, submits that the applicant was responsible in clearing certain goods, with exaggerated value, for availing huge benefit, in the form of duty drawback. According to the learned counsel, the applicant did that in spite of alert sounded by the DRI and in a way to help the dubious exporters to walk away with the huge public revenue. He further submits that the applicant is facing two disciplinary inquiries and the

review committee, which evaluated the performance of the applicant has categorically opined that the applicant is found to be a menace to the department and accordingly the impugned order was passed. He submits that the order of compulsory retirement is not a punishment and that there do not exist any grounds, warranting interference with the same.

9. The service trajectory of the applicant was in fact, a source of envy for his batchmates or colleagues. He acquired promotions one after the other and in 1992, he got cash reward for his exemplary work as Collector, Central Excise and Customs, Raipur. He is said to have recovered huge quantities of prohibited drugs and Gold between 1994 and 1999, apart from foreign currency in his capacity as Assistant Director, DRI, Mumbai, and was given appreciation letters from the Chairman, CBEC. Similar appreciations poured, for various works done by him. He was presented with the internal awards for e-governance. In the years 2012 and 2013, he was conferred with the Prime Minister's Award on the Civil Service day. He reached pinnacle in terms of reputation, when Presidential certificate of appreciation for his "Extra ordinary devotion to duty and Specially Distinguished Record of Service" on the Republic Day 2013 was issued.

10. It is here, that the adage coined by elders becomes relevant, to be remembered. Reputation is something like a heavy metal ball, and it needs lot of effort, energy and determination to take it to the tip of a pyramid. Even when one is successful, in taking the ball to the peak, his mission would be complete, if only he creates a convex surface, at the tip, so that

the ball can remain there steadily. Any lapse, in this regard, would result in the ball rolling down with great speed. This is what exactly happened to the applicant. May be, with dint of hard work, he reached a respectable position by the year 2013. However, he did not arrange for stabilizing the reputation, at that place. Either he has become over relaxed or has entertained the idea that there cannot be any obstacle for him, for whatever he proposes to do, having regard to the reputation he has earned for himself.

11. One incident that occurred in the year 2015, has seriously dented the entire reputation of the applicant. The DRI noticed that certain goods, cleared by the applicant from ICD, Tughlakabad, were over valued and the claim for duty drawback by the exporter was fictitious. Soon thereafter, they alerted the office of the applicant to ensure that the duty drawback is not paid. In spite of being alerted, the applicant is said to have helped the exporter by name Sahadev Gupta, to dispatch the goods and to claim the duty draw back. Ultimately, the department had to part with about 28 crores of public money.

12. The entire episode is presented by the respondents in their additional affidavit dated 19.11.2020 as under:

“The applicant, in his capacity as Commissioner of Customs, ICD, Tughlakabad, instead of taking immediate steps to stop disbursement of drawback to the suspected firms/companies, as required by DRI, allegedly allowed the drawback to be disbursed in respect of shipping bills which had already been scrolled out. The investigation also

revealed that he had allegedly delayed the suspension of Import Export Code (IEC) of suspected firms at Drawback Module by 4 days. The scroll was generated on 01.04.2014 and the said scroll was forwarded to the bank on 02.04.2014. The IEC was suspended on 03.04.2014. It is alleged that the timing of suspension of IEC at Drawback Module (i.e. 03.04.2014) was delayed to facilitate generation of DBK scroll (generated on 01.04.2014) and its submission to the Bank (on 02.04.2014). It is also alleged that Shri Atul Dikshit deliberately delayed the suspension of IEC to facilitate disbursement of drawback amount to the suspected firms before suspension. As a result, drawback amount of Rs.28,65,02,774/- was credited to the accounts of the suspected firms on 11.04.2014 and 15.04.2014, whereas by timely action on 31.03.2014 or on 01.04.2014, Shri Atul Dikshit could have stopped the disbursement of drawback amount, as the system is designed in such a way that when IEC is suspended for drawback purposes, the Shipping Bills pertaining to such IEC, including the ones in scroll-in queue, would not be scrolled out for drawback disbursement during the period of suspension. It is also alleged that the Applicant did not request the concerned bank to stop the release of drawback.”

13. A criminal case was registered in this behalf, but that ended in acquittal. The applicant was placed under suspension during the pendency of the criminal case. A charge memo was issued on 31.10.2017. OA.No.1980/2018 filed by the applicant challenging the charge sheet was dismissed on 06.08.2018. Another charge memo was issued to him on 05.09.2018 with the allegation of possessing disproportionate assets. It is in this background that the impugned order by invoking FR 56 (j) was passed against the applicant.

14. In a catena of judgments, the Hon'ble Supreme Court held that an order of compulsory retirement passed, by invoking FR 56 (j) is not a punishment and the judicial review of such order, is highly restricted. It is only when a plea of malafides is taken and proved to the satisfaction of the Court or when it is shown that there did not exist any material whatever to warrant invocation of such extraordinary provision, that it may become feasible, to review such orders. It was also mentioned that the ACRS/APARs need not be the sole guiding factor and that the appointing authority would be entitled to take a comprehensive view based on the evaluation of the entire service record. Reference in this context can be made to the judgment of the Hon'ble Supreme Court in [In Baikuntha Nath Das & Anr. vs. Chief District Medical Officer, Baripada & Anr.](#) (1992) 2 SCC 299, this Court held thus:

"(I) An order of compulsory retirement is not a punishment. It implies no stigma or 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 a 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. The circumstance by itself cannot be a basis for interference."

15. In the instant case, it has already been pointed out that the applicant is alleged to have become responsible for huge financial loss to the State exchequer and that was inspite of an alert sounded by the DRI, and his failure to take subsequent measures. In addition to that, he is facing charges of possessing disproportionate assets.

16. An officer in the public service is required to be honest and hardworking. This is particularly so, in the Department of Revenue. The implementation of many schemes and projects by the Government would depend upon the revenue earned through taxation direct or indirect. Even a semblance of negligence or laxity exhibited by the officers, particularly senior ones in the department, would prove to be a fatal to the administration. The applicant, who won applaus for his service, has unfortunately given a scope for the people to assume that he has changed

his mantle. The State cannot afford to have officers of such reputation on its rolls. The review committee has examined the service particulars of the applicant in detail and arrived at the conclusion that it would be not at all in public interest to continue him in service. He was just relieved of his duties even while ensuring the payment of his pension and other retirement benefits.

17. Though the learned counsel on both sides have cited quite large number of decisions of the Hon'ble Supreme Court in support of their respective contentions, we are not referring to them, since the law laid down by the Hon'ble Supreme Court has so crystallized that one does not have to repeat the contents of the judgments.

18. We do not find any merit in the OA and the same is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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