



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/703/2020

&

M.A.No.100/1931/2020 in O.A./100/703/2020

Date of reserve for orders:16-10-2020

Date of Pronouncement of orders:09-12-2020

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Aradhana Johri, Member (A)

Capt. Pramod Kuamr Bajaj, s/o late Shri PD Bajaj,
Aged 59 yrs, 222 MG Road, Lucknow.

....Applicant

(Through Mr.Pramod Kumar Bajaj, Party-in-Person)

Versus

1. Union of India, through Revenue Secretary
Department of Revenue, Govt. of India,
North Block, New Delhi-110 001.
2. Chairman, CBDT, Department of Revenue,
Govt. of India, North Block, New Delhi-110 001.

... Respondents

(Through Mr.Hanu Bhaskar, Mohd. S Ullah Farman Ali and Mr.Ravi
Prakash, Advocates)

**ORDER****Justice L. Narasimha Reddy, Chairman**

The applicant was appointed as Second Lieutenant in the Indian Army in the year 1980, on being selected by the National Defence Academy. He was promoted to the post of Captain and thereafter was appointed as ADC to the State Governor. On account of the disability suffered by him, he was demobilized from the Army. He took part in the Civil Services Examination 1989 and was allocated to a 1990 batch of IRS. He held various posts and was also empanelled as Joint Secretary to the Government in the year 2016. It is also stated that he was selected for appointment as a Member of the Income Tax Appellate Tribunal (ITAT), but denial of vigilance clearance became the hurdle for the consequential appointment.

2. Departmental inspection was caused into the working of the applicant as Commissioner of Income Tax (Exemption) in the States of Uttar Pradesh and Uttarkhand. On the basis of that, the applicant was issued with a charge memorandum. He filed OAs in relation to those proceedings.

3. The Government passed an order dated 27.09.2019 under Fundamental Rule 56 (J) and made the applicant to retire from service, before he attained the age of superannuation. The applicant filed a review against the order dated 27.01.2019, and the same was rejected. This OA is



filed challenging the order dated 27.01.2019 and the order passed by the reviewing authority.

4. The applicant contends that he had a spot less career, spread over nearly 30 years and he furnished without giving scope to any adverse remarks or comments. He contends that his ACRs, in the entire service are rated at the level of outstanding, and his integrity was never doubted. It is stated that the very fact that he was promoted to several higher posts discloses his meritorious service. He contends that his trouble started when he was selected as a Member of ITAT and the Department went on creating one hurdle or the other.

5. The applicant submits that every step initiated by the respondents be it the one for transfer or denial of vigilance clearance or inclusion of his name in the agreed list of CBI; were set at naught by this Tribunal and even the charge sheet issued with vague and baseless allegations is under challenge. He contends that FR.56 (J) was chosen to mar his career, which comes to an end within a matter of few months and the entire exercise is arbitrary, illegal and unconstitutional. The applicant further states that if one takes into account, his past service record or the nature of service rendered by him, there was absolutely no basis for retiring him on compulsorily basis. He placed reliance on certain precedents.



6. On behalf of the respondents, a detailed counter affidavit is filed. The various contentions urged by the applicant are contradicted. A detail account of the circumstances that gave rise to issuance of order of compulsory retirement against the applicant is furnished.

7. The respondents contend that several complaints were received against the applicant as regards his functioning as well as his integrity, and every attempt made by the department to verify the veracity thereof was thwarted by the applicant one way or the other. They contend that the applicant did not digest even an order of transfer from one office to another in the same station and he did not submit reply to the notice, issued after conducting inspection as provided under the relevant provisions of law. They submit that the conduct of the applicant was such that his name was included under the agreed list of CBI, but the corresponding order was set aside by the Tribunal.

8. The respondents submit that the committee constituted for the purpose of identifying the officers against whom FR.56 (J) can be invoked, examined the record of the applicant in detail and it has recorded detailed reasons in support of its conclusion to invoke that provision. The respondents further state that the conduct of the applicant reached a stage that it was no longer feasible for the Government to continue him in service and in fact, he turned out to be a menace to the department. According to the respondents, the scope of interference with the order passed by invoking FR.56 (J) is very limited and by referring to a catena of judgments, they contend that no interference is warranted in the instant case.



9. The applicant argued the case in person. He elaborated the various contentions urged in the OA and has also relied upon the relevant precedents in support of his contentions.

10. On behalf of the respondents, arguments were advanced by Shri Ravi Prakash for Shri Hanu Bhaskar, learned counsel for the Respondents. They concentrated mostly on the scope of interference by this Tribunal with the orders of compulsory retirement. They submit that the record of the applicant speaks for itself, and it was no longer in the interest of the department to continue the applicant in service.

11. The service of the applicant started in the Indian Army and he has also worked as ADC to Governor. Thereafter, he took part in the Civil Services Examination in 1989 and was allocated to Indian Revenue Service. After induction into that service, he earned many promotions. He worked as Commissioner of Income Tax (Exemption) for the States of Uttar Pradesh and Uttarkhand. He was selected as a Member of ITAT. However, that could not materialize on account of the denial of vigilance clearance to him, followed by his inclusion in the agreed list by the CBI.

12. The applicant filed OA.No.77 of 2018 challenging the denial of vigilance clearance and O.A.No.137 of 2018 on 06.03.2009, questioning the inclusion in the agreed list. Both the OAs were decided in his favour on 2.2.2018 and 2.5.2018. We were not concerned with the details thereof or the consequences that ensued. The result is that the applicant could not



make it to the appointment as a Member of ITAT, despite an order passed by the Lucknow Bench of the Tribunal on 22.05.2018 in OA.No.279 of 2018 directing that vigilance clearance be furnished to the applicant.

13. It is brought to our notice that the orders passed by the Lucknow Bench of the Tribunal, are under challenge before the Hon'ble Allahabad High Court, and in some cases they were upheld either by the Hon'ble High Court or by the Supreme Court.

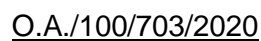
14. The applicant was issued a charge memorandum dated 17.06.2019. The first charge was that the applicant appeared in person before the Benches of the Tribunal, the Hon'ble High Court in various cases and that he did so without obtaining any leave or permission from the competent authority. The second charge was that the applicant acquired items of immovable property worth Rs.70 to 80 lakhs and settled it in favour of one of his estranged and divorced wives towards alimony without giving any intimation about the acquisition of such property as required under Rule 18 (2) of the CCS (Conduct) Rules. The third article of charge is that the applicant married several women, one after the other and it is only in respect of his first marriage, there was a divorce decree and not when he married the other women.



15. The applicant filed OA.No.330/2019 challenging the charge sheet and this Tribunal dismissed the same. He is said to have filed a Writ Petition against the order passed in the OA.

16. The applicant was due to attain the age of superannuation on 31.01.2020. The order of compulsory retirement was passed on 27.09.2019. Several contentions are advanced by the applicant. One of the grounds urged by the applicant is that the order was passed at a time when his case was about to be considered by the DPC for promotion to the post of Principal Chief Commissioner. The impugned order is almost in a typical format. It does not refer to any specific event or acts of misconduct. However, it is in the course of judicial review that the connected facts, are placed before the Tribunal.

17. Before proceeding to discuss the issue on merits, certain aspects need to be kept in mind. Through a catena of judgments, the Hon'ble Supreme Court held that the order of compulsory retirement is a step to clear the dead wood in the administration, and it cannot be said as a penalty or punishment, inasmuch as the employee would get all the benefits, which he is otherwise get entitled to, on his retirement. A note of caution was added to the effect that the provision cannot be invoked as a substitute for disciplinary proceedings or to otherwise get rid of an employee who is otherwise clean in all respects. Reference in this context can be made to the following judgments.



18. We do not feel the necessity to extract the relevant paragraphs of all the judgments.

19. In **State of Gujarat v. Umed Bhai M. Patel** (2001 (3) SCC 314), the Hon'ble Supreme Court summed up the law relating to the compulsory retirement as under:

"The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. While misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement State Of Gujarat vs Umedbhai M. Patel on 27 February, 2001 Indian Kanoon - <http://indiankanoon.org/doc/893467/> 3 they merely furnish the background and the enquiry, if held -- and there is no duty to hold an enquiry -- is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made, as pointed out by this Court in Shyam Lal vs. State of U.P. [AIR 1954 SC 369]". In Union of India & Ors. vs. Dulal Dutt (1993) 2 SCC 179, this Court reiterated the view held right from the case of R.L. Butail vs. Union of India (1970) 2 SCC 876 and Union of India vs. J.N. Sinha (1970) 2 SCC 458 "that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court, the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order." In another decision in J.D. Srivastava vs. State of M.P. & Ors. (1984) 2 SCC 8, in paragraph 7 of the judgment, it was observed by this Court as under: "But being reports relating to a remote period, they are not quite relevant for the purpose of determining whether he should be retired compulsorily or not in the year 1981, as it would be an act bordering on perversity to dig out old files to find out some material to make an order against an officer." The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus: (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest. (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution. (iii) For better administration, it is necessary to chop off dead- wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer. (iv) Any adverse entries made in the confidential record shall be taken



note of and be given due weightage in passing such order. (v) Even uncommunicated entries in the confidential record can also be taken into consideration. (vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable. (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

20. At the end of the day, an order of compulsory retirement is the result of an administrative exercise undertaken by the concerned authority. Such orders are no doubt amenable to judicial review.. However, the scope thereof is some what restricted and limited.

21. What the Courts are to be satisfied is about the existence of the material, compared to the nature or content of the material.

22. Reference in this context can be made in the judgment of the Hon'ble Supreme Court in ***Tata Cellular v. Union of India*** (1994 (6) SCC 651). It was held that it is the decision making process than the decision itself, which would be the subject matter of scrutiny. Their Lordships observed in Para 94 as under:

“94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.



- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

23. Keeping in view the principles of the proceedings, various contentions advanced by the applicant, the issue itself, we intended to clarify one aspect. The applicant strongly insisted that the respondents shall be required to produce the entire record relating to passing of the impugned order and the recommendations by the DPC, which met for promotion to the post of Principal Chief Commissioner and other connected records. We examined the request in all its seriousness. But on perusing the material before us in the form of pleadings and annexures, we are of the view that there is no necessity to summon the record, having regard to the nature of judicial review, in matters of this nature.



24. Fundamental Rule 56 (j) empowers the Government to retire the employees, in case of Group-A and B, who cross 50 years of age on compulsory basis, if it is found that their continuance is not in public interest. Not only the judicial pronouncements but also administrative decisions and circulars issued from time to time, have thrown light on the interpretation of the provision.

25. In the year 2019, a comprehensive exercise was undertaken in the Income Tax Department to identify the officers, whose continuance in service is not in the public interest. About 15 officers have been identified and the applicant was one among them. The background of each and every officer is mentioned in the note prepared for that purpose. The review committee examined the case of the applicant placed before it.

26. In the counter affidavit, the respondents summed up the observations made by the review committee, before the name of the applicant was identified for compulsory retirement under FR 56 (j). In para 8 of the counter affidavit, the factors that weighed with the committee are mentioned and it comes into 8 pages. We do not intend to burden the judgment with the details thereof. However, we feel it appropriate and essential to refer to the gist thereof, contained in para 8. It reads as under :

“8. That the review committee considered gravity of charges and allegations made against the officer for a major part of his career.



i. The Committee noted that a large number of complaints have been received against the Applicant, CIT (90031) from time to time. The details of complaints and their current status is as under:

S. No.	Name of officer	Complainant	Status
1.	Sh. P. K. Bajaj, Addl. CIT Range -6 (2) Mumbai	Shri S.K. Jangre / Shri O.P. Jangre (father)	Under examination
2.	Sh. P.K. Bajaj, CIT (E), Lucknow	Complaint made by Driving Training and Scientific Research Lucknow in January 2015	Under examination
3.	Sh. P.K. Bajaj, CIT (E), Lucknow	Sh. Dharm Veer Kapil IFS Retd dated 17.10.17	Under examination
4.	Sh. P.K. Bajaj, CIT (E), Lucknow	Sh. Balesh Singh, through PMOPG/ E/2017/0597795 dt 17.11.17.	Closed on 22.01.2019
5.	Sh. P.K. Bajaj, CIT (Exemption), Lucknow	Sh. Ashok Verma, Lucknow	Closed on 19.07.16
6.	Sh. P.K. Bajaj, CIT (Exemption) Lucknow	Sh. Jagat Pandey, 28/42, Civil Lines, Bareilly, U.P. Dt. 29.06.16	Closed on 07.10.16.
7.	Sh. Pramod Bajaj, CIT (Exemption), Lucknow	Sh. Ashish Rastogi, A-70, Gandhi Nagar, Prince road, Muradabad, UP	Closed on 29.08.16.
8.	Sh. Pramod Bajaj, Addl. CIT	Ms. Renu Bajaj w/o Shri P.K. Bajaj	Report pending from Pr. CCIT Jaipur
9.	Sh. Pramod Bajaj, CIT (Exemption), Lucknow	Ms. Rakhee	Under examination



ii. The Committee further noted the status of various complaints under examination against the Applicant, CIT (90031). The complaints under examination are summarized as under:-

- a. F.No.PSR/NZ/151/17) – A complaint dated 17.10.2017 was filed by Sh. Dharam Veer Kapil, IFS (Retd.), T-122, Phase-2, Meerut, UP against Sh. P.K. Bajaj, CIT (E), Lucknow alleging that the application under section-12AA of Income Tax Act was filed for registration of society namely SINCERE (Society for Integrated Care of Environments & Rural Economy) before the office of Shri P.K. Bajaj. It is alleged that Shri P.K. Bajaj asked the complainant / applicant to meet one of his assistants who demanded bribe for 12AA registration. His application for registration u/s 12AA was not granted. No opportunity was given before rejection of 80G application.
- b. (F.No.NZ/VCR/43/17) – A complaint filed against Sh. P.K. Bajaj by Sh. Samir Yadav on behalf of institute of Driving Training and Scientific Research before Revenue Secretary, Govt. of India, New Delhi on 07.01.2016 alleged that the officer was demanding bribe for granting approval u/s 12AA of the I.T. Act. He misused his powers and positions for his vested and personal interest and rejected the application.
- c. (F.No.PSR/WZ/09/10 merged with PSR/WZ/72/11) – Complaint by one Sh S.K. Jangre. In these files, there are issues of (1) erroneous assessment of M/s Empire Industries Limited for A.Y. 2004-05 completed by Shri P.K. Bajaj and proposal put up u/s 263 of IT Act, and (2) issue of missing case of records of the assessee M/s. Chintamani Estate Pvt. Ltd. (3) harassment of Shri S.K. Jangre, ACIT by Shri P.K. Bajaj. The file is under examination.

iii. The Committee also noted that in view of the complaints against the Applicant, a Vigilance Inspection was carried out by the Central Inspection team on 29.11.2017 & 30.11.2017 for the period of 22.06.2015 to 29.11.2017 to inspect the work of Shri P.K. Bajaj CIT (Exemption) Lucknow. A large number of irregularities were noticed in the vigilance inspection. The irregularities noticed in the vigilance inspection are briefly listed as under:-

v. The Committee also noted that in spite of numerous opportunities given to him vide letters dated 03.05.2018, 13.07.2018, 25.07.2018, 08.02.2019, 05.03.2019 and 01.04.2019 he has not given any reply to the version letter issued on 30.01.2018. Sh. P.K. Bajaj CIT (Exemption) Lucknow approached Hon'ble CAT Lucknow Bench, which passed an interim order on 02.02.2018 in OA No.77/2018 and directed the Department not to finalize the proceedings initiated on the basis of inspection conducted on 29.11.2017 and 30.11.2017. Subsequently, Hon'ble CAT, Lucknow Bench vide order dated 28.05.2019 quashed the version letter dated 30.01.2018 issued pursuant to vigilance inspection. The Department is in the process of filing of Writ Petition to challenge the order.

vi. The committee also noted the observation of concern by Hon'ble ITAT, Lucknow Bench in respect of quality of order passed by Sh. P.K. Bajaj as CIT (Exemption), Lucknow. A letter dated 08.02.2016 was issued by the office of CIT (ITAT), Lucknow communicating the serious concern expressed by the Hon'ble ITAT, Lucknow Bench in the course of hearing of the appeal in the cases of Fateh Chand Charitable Trust Ganesh Sewa Samitee of Bahraich, UP against the orders



passed by Shri P.K. Bajaj (90031) as Commissioner (Exemptions).

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vii. The committee noted that the name of the officer was included in the Agreed List for the year 2018 jointly by the Department and the CBI. However, Hon'ble CAT, Lucknow Bench quashed the inclusion of his name in the Agreed List vide common order dated 06.03.2019 in OA Nos.137/2018 and 279/2018. The Department has challenged the order dated 06.03.2019 by filing a Writ Petition (WP 19039/2019) before Lucknow Bench of Hon'ble High Court of Allahabad.

viii. Further, the committee noted that a complaint was made by the ex-wife of the Applicant against him wherein various allegations related to bigamy, moral turpitude and amassment of illegal wealth etc. have been made. It has also been alleged in the complaint that Hon'ble High Court, Allahabad had imposed exemplary cost of Rs.50,000/- and Rs.5,000/- in criminal case no.3676/2010 vide order dated 31.05.2011 and 18.10.2012. it has also been alleged that on complaint of his ex-wife, the Applicant was arrested and sent to judicial custody for the period from 16.12.2009 to 09.01.2010.

ix. The committee also noted that the Applicant had initiated a large number of legal proceedings before Hon'ble CAT, Lucknow Bench and Hon'ble Allahabad High Court, Lucknow Bench and appeared in person in these matters on various dates without seeking any kind of leave.

x. The Committee also went through the records indicating purchase of a flat by the Applicant in Ashok Vihar, Delhi worth about 70 to 80 lacs and handing over the same to his estranged wife by way of alimony in compliance of a Court order. No intimation regarding acquisition or transfer of the property was given by the Applicant as required by CCS (Conduct) Rules, 1964.

xi. The committee further noted that records indicated that the Applicant had allegedly married with one Ms. Renu and then Ms. Rakhi without any judicial separation/divorce from Ms. Sapna thereby allegedly committing bigamy.



xii. Further, Major Penalty Proceedings u/r 14 of the CCS (CCA) rules, 1965 vide memorandum R.No.A-24012/6/2019-Ad.VI(A), dated 17.06.2019, were initiated with three Articles of charges against the Applicant relating to violation of Rule 7 of CCS (Leave) Rules, 1972, violation of Rule 3 (1) (ii), 3 (1) (iii), 18(2) and 21 (2) of CCS (Conduct) Rules, 1964. The details of the misconduct are described at great length in the charge sheet issued in the aforesaid disciplinary proceeding.

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(Three articles of charge omitted)

The Disciplinary Proceedings in the matter are under progress.

xiii. The Applicant has also been placed under suspension vide CBDT order dated 01.07.2019 issued from F.No.C-29016/67/2019-Ad. VIA. Shri P.K. Bajaj, CIT (90031) challenged his suspension by filing OA no.357/2019 before Hon'ble CAT, Lucknow Bench. Hon'ble CAT, Lucknow Bench disposed of the OA vide order dated 15.07.2019 by directing the applicant to prefer an appeal before the appellate authority."

27. Each and every complaint extracted above is also elaborated. It may be true that the applicant was successful in challenging denial of vigilance clearance, inclusion in the agreed list, and the like. On that basis the applicant made an attempt to argue that all the allegations made against him that led to denial of vigilance clearance or inclusion in the agreed list, are deemed to have been quashed. We do not agree with him.

28. The applicant was required to submit his explanation to an allegation of misconduct. He challenged the notice itself, after dodging the matter for quite some time. A Bench of this Tribunal at Lucknow, has no doubt quashed the notice. However, from that fact, it cannot be inferred that the



allegations made against the applicant is held not proved or non-existent. The order passed by the Tribunal is the subject matter of the Writ Petition and we cannot make any comment on them. What, however, emerges from various developments is that the applicant did not permit the Administration to regulate him in whatever form or manner. Every attempt such as transfer from one post to another, in the same place, the conduct of the inspection were thwarted. More and more the applicant was running away from these exercises, the resolve of the department naturally got increased. For all practical purposes, the applicant has chosen to challenge the very authority of the department in every form and at every stage. No department of Government, not to speak of a sensitive one like the Income Tax, can afford to function with such officers at senior positions.

29. The responsibilities attached to the office held by the applicant are highly sensitive and with serious financial and legal consequences. The Income Tax Appellate Tribunal dealt with the order passed by the applicant and expressed serious concern. The citizens who wanted to get the benefit of provisions of Income Tax Act in the hands of the applicant, have their own grievances. The personal life of the applicant was not only extraordinary but also dented the very reputation of the department. When such is the status, which the applicant has acquired for himself, the respondents are left with no other alternative except to invoke Rule 56 (j).





himself to be regulated at all or has become a menace for the department. After perusing the entire record and on a consideration of the authoritative pronouncements on the subject that are cited by both the parties, we are convinced that the respondents were within their power to pass the impugned order.

34. The applicant argued that the impugned order is tainted with malice in law. According to him, the proceedings initiated one after the other, support his contention,. However, if one carefully examines the sequence of events, particularly those in the past 4 or 5 years in respect of the applicant, the inescapable conclusion is that it is only the applicant, if at all any one, who forced the respondents to take recourse to Rule 56 (j).

35. We do not find any merit in the OA and the same is accordingly dismissed.

36. The MA.No.1931/2020 also stands disposed of. There shall be no order as to costs.

(Aradhana Johri)
Memb er (A)

(Justice L.Narasimha Reddy)
Chairman