

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 473/86
T.A. No.

199

DATE OF DECISION 24.9.1993

Shri B.B. Julka

Petitioner

Shri Jitendra Sharma

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri K.C. Mittal

Advocate for the Respondent(s)

CORAM


The Hon'ble Mr. J.P. Sharma, Member (J)

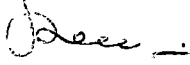
The Hon'ble Mr. B.K. Singh, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

JUDGEMENT

(delivered by Hon'ble Mr. B.K. Singh, Member)


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 473/86

Dated: 24.9.93

B.B. Julka

Applicant

Vs.

Union of India & Ors.

respondents

Shri Jitendra ~~Prasad~~ Sharma for the Applicant
Shri K.C. Mittal for the Respondents.

CORAM

1. Hon'ble Mr. J.P. Sharma, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT

(Delivered by Hon'ble Mr. B.K. Singh, Member (A))

This O.A. 473/86 B.B. Julka as Applicant
Vs. Union of India, Union Finance Minister,
Secretary Revenue, Chairman, Central Board of
Customs & Excise, Shri P.C. Jairaman, Joint
Secretary in the Department of Revenue and others
as respondents, has been filed under Section 19
of Central Administrative Tribunal Act 1985 and
is directed against the order No.
F-A-38012/2/85/Ad.II dated 12th October 1985 of
pre-mature retirement under Fundamental Rule
56(J).

2. The applicant was born on 16.3.1933
and joined the Indian Customs and Excise
Service, Class I, on 19th January 1957 and after
holding important assignments including his 8
years stay in Hongkong, 5 years in Delhi as
Collector, Customs & Central Excise was promoted

as Member Central Board of Excise and Customs and ex-officio Additional Secretary to Government of India superseding 2 of his seniors in October 1984. On behalf of Government of India he attended a special seminar in January 1985 sponsored by International Cooperation Council at Brussels and subsequently in June 1985 the applicant was again deputed to attend the Annual Session of the Customs Cooperation Council at Brussels.

3. On his return from Brussels the applicant was removed from the post of Member Central Excise & Customs Board and made OSD and was given no work and was finally retired prematurely on the 12th October, 1985 under FR 56(J).

4. In O.A. the applicant has prayed for setting aside the impugned order of premature retirement with the directions to the respondents to reinstate him as Member, Central Board of Excise & Customs with retrospective effect. Fundamental Rule 56(J) reads as follows:

"Notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice;

- i) If he is in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;



ii) in any other case after he has attained the age of fifty-five years;

Provided that nothing in this clause shall apply to a Government servant referred to in clause (e), who entered Government service on or before the 23rd July, 1966".

5. We have heard the learned counsels, Shri Jitendra Prasad for the applicant and Shri K.C. Mittal for the respondents and have perused the records of the case, the departmental files containing the minutes of the Review Committee and the orders of the ACC regarding premature retirement under FR 56(J) and also the rejection of the applicant's representation by the ACC.

6. The learned counsel for the applicant admitted that in Fundamental Rule 56(J) it is stipulated that the Government have, if it is of the opinion that it is in public interest to do so, the absolute right to retire any government servant prematurely by giving him 3 months' notice or 3 months pay in lieu thereof. He further argued that this right is not absolute since the Constitution makers always felt that there should be checks and balance on the exercise of this power. The word 'absolute' does not confer any arbitrary powers to destroy the checks and limitations to which it is subject by its inherent nature. The learned counsel further argued that the fundamental rights cannot be negated or superseded in their true spirit by taking shelter under the word 'absolute' used in FR 56(J). He quoted observations of Hon'ble High Court of Delhi at ILR (1972) 2 Del. 620 to

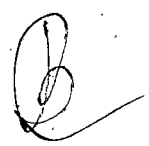
B

stress the point that though the power under the rule is prima facie conferred absolutely, it cannot be exercised arbitrarily. He argued that under FR 56(J) an order of compulsory retirement can be passed only where competent or appropriate authority forms 'bonafide' opinion that a government servant be retired in 'public interest'. The opinion must not be based on surmises or conjectures but must be based on solid/bonafide and not on arbitrary grounds. He further said that the onus lies on the government to establish that it acted in a fair, reasonable and rational manner before forming its opinion and that he did not act on collateral or any malafide manner. In this connection the learned counsel pointed out that ~~the~~ the Hon'ble Supreme Court while admitting that the power to retire a government servant compulsorily in 'public interest' in terms of services rule is absolute provided the authority concerned forms an opinion that it is necessary to pass such an order in public interest. It is equally well settled that if such decision is based on collateral grounds or if the dedcision is arbitrary, it is liable to be interefered with by courts as has been held in the Union of India Vs. Col. J.N. Sinha (1971 1 SCR 791); (1970 2SC 458: AIR 1971 SC:40 (1970) 2 LLJ 284. A copy of the judgment in the matter of J.D. Srivastava, appellant Vs. State of M.P. as respondents, was placed before us in civil appeal No. 3429 of 1982 decided on January 24 1984 by Hon'ble Mr. O. Chenappa Reddy, Hon'ble

Mr. E.S. Venkatakrishnaiah and Hon'ble Mr. R.B. Mishra (JJ). In this it was held that orders of compulsory retirement based on arbitrary grounds are liable to be set aside by court. The appeal was allowed and all consequential financial and other benefits were allowed to the appellant as if the order of compulsory retirement had not been passed.

7. The learned counsel further quoted that order of compulsory retirement passed soon after promotion to selection post, in absence of any circumstances adverse to the aggrieved officer was held not justified. This judgment was delivered by Hon'ble Mr. O. Chenappa Reddy and Hon'ble Mr. A.P. Sen (JJ) in the matter of D. Ramaswamy appellant Vs. State of Tamil Nadu as respondents in civil appeal No. 3436 of 1979 decided on January 28, 1982. A copy of this judgment was also produced before the court by the learned counsel for the applicant. The learned counsel argued that the applicant was promoted in October 1984 and the presumption is that his ACRs must have been outstanding on the basis of which he was given the selection post of Member, Central Excise and Customs Board and made ex-officio Additional Secretary to the Government. Within a year there could not be such a deterioration either in work or conduct or integrity of the officer to deserve premature retirement under FR 56(J). He further argued

that the principles of natural justice have been completely denied and no reasons were given in the order or no opportunity was given to the applicant before passing the order of premature retirement under FR 56(J). He further argued that the applicant was retired because of departmental jealousy of two of his seniors and he also succeeded Shri J. Dutta who was elevated to the post of Chairman, Central Board of Excise and Customs in place of Shri R.C. Misra before the applicant was compulsorily retired. He further pointed out that in such cases of premature retirement, there must be specific grounds and instances to prove doubtful integrity which have not been disclosed to him or to the applicant. However, the learned counsel was allowed to see the ACRs of the applicant and also relevant file containing the minutes of the Screening/Review Committee and the order of the ACC. According to him the opinion was formed on the basis of commissioned report from Shri J. Dutta who had not personally seen the work of the applicant and thus was unfair and unjust. The opinion according to him was not objective but it was based on subjective considerations whereas the rules clearly provide that the opinion must be formed on objective and bonafide consideration in public interest. He further said that Mr. R.K. Tikku who was made a member of the Screening Committee was not entitled to be there because he was not in any way associated with the work of the Revenue Department of the Finance



Ministry. He repeatedly emphasised the point that it was because of his brilliant record of service that the applicant against a normal tenure of 3 years was allowed to stay for 8 years in Hongkong and this aroused jealousy and envy amongst the senior colleagues. After seeing the ACRs and the minutes of the Review Committee and the ACC, the learned counsel opined that the entire thing was showbiz enacted with a view to elbow out the applicant from government service on arbitrary and malafide grounds. The evidence on the file according to him was no evidence at all and it cannot go to establish the fact of doubtful integrity. He also referred to the observations of Hon'ble Supreme Court in Vaikunth Lal Mehta case. In this case it has been held that there must be something in the conduct which must be reflected in the past record of service and the past plus present should constitute material grounds for purposes of review. The entire record of service according to him should have been taken into account before passing the order of premature retirement under FR 56(J). He concluded by saying that it baffles the reason as to how the officer who was considered fit for being promoted to a coveted selection post, could be retired prematurely under FR 56(J) on grounds of doubtful integrity. The relevant files were tailored in a manner that they will serve the purpose of the masters who wanted to get rid of the applicant. He repeatedly called it as a commissioned report from the then Chairman, Shri

B

J. Dutta. He dubbed the premature retirement under Fr 56(J) as arbitrary and motivated. The instances produced in the relevant file amount to no evidence and as such the order of premature compulsory retirement is ab initio void and fit to be set aside.

8. We have very carefully perused all the extracts of the judgments produced and have considered the arguments advanced by the learned counsel for the applicant and have also carefully perused the materials available in ACR and also in the relevant departmental file produced before us to establish that the applicant was a man of doubtful integrity.

9. The learned counsel for the respondents produced records and documents and argued that in all other cases of premature retirement of officers the orders have been upheld by the various hon'ble Benches of the Central Administrative Tribunal. In this connection he produced order passed in the matter of B.N. Rangavani, another Member on the Board Vs. Union of India and others. The judgments were delivered on 21.8.87 by Hon'ble Mr. Justice K.S. Kuttaswamy, Vice Chairman and Hon'ble Mr. Birbal Nath, Member (A). The orders passed by Hon'ble Mr. N.V. Krishnan, Vice Chairman and Hon'ble Mr. B.S. Hegde, Member (J) in the matter of A.P. Aggarwal, petitioner Vs. Union

B

of India and the judgment was delivered on 11.6.93. The judgment delivered by Hon'ble Vice Chairman, Mr. B.C. Gadgil and Hon'ble Member (A), Mr. P. Srinivasan dated 30 January 1987 and the orders passed by Hon'ble Mr. J. P. Priolkar, Member (A) and Hon'ble Mr. J.P. Sharma, Member (J) were produced before us. This judgment was delivered on 14.8.92 and finally the judgment was delivered by the Principal Bench in the matter of M.s. Bindra, applicant Vs. Union of India & others as respondents. This judgment was delivered on 3.12.92 by Hon'ble Justice Mr. Ram Pal Singh, Vice Chairman and Member (A) Mr., I.P. Gupta.

10. We have perused the judgments passed by the various Benches of Central Administrative Tribunal in cases of various applicants. The learned counsel for the respondents also stated that there was absolutely no scope to interfere with the orders because it has been passed under statutory rule framed under Article 309 of the Constitution and the grounds are enough to warrant premature retirement under FR 56(J) on the basis of doubtful integrity.

11. We have carefully considered all the facts and circumstances of the case. Let us look at the totality of the facts of this case before we arrive at a decision. The learned counsel for the applicant has quoted two rulings of the Hon'ble Supreme Court in support of this case.



The first ruling is about compulsory retirement under FR 56(D) and Rule 36(B)/1/TN General Rules for State and Subordinate Services and Rule 2(D) of the Tamil Nadu Special Rules for Commercial Tax Services. In the matter of D. Ramaswami, appellant Vs. State of Tamil Nadu respondents in civil appeal No. 3436 of 1979 the Hon'ble Supreme Court held that "even after the promotion of a government servant his previous history should not be completely ignored. Sometimes past events may help to assess the conduct. Compulsory retirement immediately following the promotion to a coveted and prestigious post is likely to perplex any reasonable person." In the case of B.B. Julka premature retirement has been ordered under Fundamental Rules 56(J) which is comparable to All India Services Rules 16(3) and we have identical provisions under Article 459 of the Civil Services Regulations and provisions also exist in Rule 43 and 48 of the CCS (Pension) Rules 1972 for the retirement of a government employee by giving him a three months notice or three months pay in lieu thereof in public interest after he has completed 25 years of qualifying service for pension or 30 years qualifying service for pension, if he is post-1939 entrant and he may belong to any of the Group, A, B, C or D services. Thus the present ruling cited is not relevant to the case of the present applicant. Similarly, the other ruling in J.D. Srivastava, appellant Vs. State of M.P. & Others as respondents (1984) the Hon'ble

B

Supreme Court in civil appeal No. 3429/1982 decided on January 24, 1984 lays down the principle that "where reliance is solely placed on stale entries in the CR for premature retirement and Confidential Records become the sole basis of decision under FR 56(3) (a), it was held as void". But in this judgment also para 4 clearly states, "it is now firmly established that the power to retire a government servant compulsorily in public interest in terms of service rule is absolute provided the authority concerned forms an opinion that it is necessary to pass such an order in public interest". It is only when the decision is based on collateral grounds or if the decision is arbitrary that it is likely to be set aside. This judgment also does not question the right of the government to order premature retirement under FR 56(J) which is of a comprehensive nature. Retirement takes place on grounds of ineffectiveness and on grounds of doubtful integrity. This ruling also does not help the applicant very much.

12. There is ~~one~~ point raised regarding nomination of Shri R.K. Tikku as a Member of Screening Committee. Shri Tikku was Establishment Officer and the E.O's job is to process not only the promotion ^{posts} cases of all the officers working under Government of India but also various Public Sector Undertakings working under the administrative control of the Ministries. In the latter case he processes the

case of Directors and Chairman & Managing Directors and in case of ^{other} ~~all~~ appointments above the rank of Under Secretary to Government of India. The case of Shri B.B. Julka in October 1984 must have been processed by him and all clearances must have been obtained from the concerned Ministries including Vigilance clearance before sending the proposal to ACC. No memorandum can be put up before the ACC till the vigilance clearance is obtained from CVC and CBI and internal vigilance of department and as such association of Mr. Tikku would have been advantageous to the applicant and also to the Government. If the E.O. processed the case of promotion to the coveted post he was also duty-bound to process the case of premature retirement for obtaining the approval of the ACC. Thus his presence in the Review Committee does not prejudice the interest of the applicant in any way. He is an objective observer not guided by the departmental jealousy. Therefore this contention of the learned counsel for the applicant that Shri Tikku should not have been associated since he had not seen the work of the applicant is not correct.

13. Coming to both the rulings cited by the learned counsel for the applicant that the past history should not be ignored we would like to say that we have very closely studied the ACRs of the applicant. It is true that in the second ruling it has been held that reliance should not

(41)

be placed on ACRs alone. Neither the ACRs have to be ignored nor sole reliance is to be placed on them as laid down by the Hon'ble Supreme Court. Fundamental Rules are creation of Article 309 of the Constitution and orders issued under the rules also have the force of statutes. A perusal of O.M. No. 25013/14/77-Estt(A), dated 5th January, 1979 issued by Ministry of Home Affairs, Department of Personnel & A.R., lays down the principles and the criteria, procedure and guidelines to be followed under FR 56(J) by the Screening Committees/review Committees and the appropriate authority. This circular clearly lays down that the decision regarding premature retirement on the basis of the unfitness or incompetence or ineffectiveness or doubtful integrity must be assessed in bonafide manner and the orders must be passed purely in public interest. The same is the spirit in Civil Services Regulation No.459 and also of Rule 43 and 48 of Central Civil Services (Pension) Rules 1972. This O.M. has been further supplemented by another O.M. No.25013/30/85-Estt. issued by Ministry of Personnel & Training on 7.8.85 and this O.M. is solely devoted to premature retirement of Central Government Servants ^{about} ~~and~~ the guidelines which have to be followed where integrity of the government servant has been found to be doubtful.

42

14. Perusal of the entire service record as mentioned in para 2(3) (c) of O.M. dated 5th January 1978 lays down that the entire service record of an officer should be considered at the time of review. It further clarifies that consideration has clearly to be confined to the preceding 5 years or to the period in the higher post in case of promotion within the period of 5 years, only where retirement is sought to be made on grounds of ineffectiveness. This O.M. lays down that there is no such stipulation where the employee is proposed to be retired on grounds of doubtful integrity. The personal file of the officer may contain details of the nature of doubts that arose regarding his integrity and the result of the preliminary investigation that was carried out. The matters found on the personal file of the officer should, therefore, be scrutinised and it is also likely that there may be several files on several subjects touching the integrity of the officer and this is to be placed before the review committee along with the CR dossier. The judicial pronouncements also are to the effect that personal assessment of the officer as reflected in dossier should be taken into account for premature retirement. This was held in the Union of India Vs. M.E. Reddy (AIR 1980 Supreme Court 563, "It will be indeed difficult if not impossible, to prove by positive evidence that a particular officer is dishonest. But who have had the opportunity to watch the performance of the said officer in close quarters



are in a position to know the nature and character not of his performance but also of the reputation that he enjoys." In R.L. Butail Vs. Union of India and Anr. (1971 2SC 1285) it was observed, "It may well be that in spite of the work of the appellant being satisfactory as he may claim it was, there may have been other relevant factors such as the history of the appellant in the entire service and confidential reports throughout the period of service, upon which appropriate authority may still decide to order appellant's premature retirement under FR 56(j). It has been envisaged in the O.M. of 1985 that screening committees/review committees have to be set up as standing arrangements in all Ministries/Departments/Offices for consideration of cases of premature retirement under FR 56(J). In the case of Brij Bihari Lal Vs. State of M.P. (AIR 1981 Sc 594), it was held that the uncommunicated adverse remarks need not be taken into account except when they reflect on the integrity of an officer. In case of R.L. Butail Vs. Union of India, it has been observed, "contention, therefore, that the adverse remarks do not contain specific instances are, therefore, contrary to the rules cannot be sustained. Equally, unsustainable is the corrolary that because of the omissions the appellant could not make an adequate representation and that, therefroee the orders are vitiated". All actions taken in public interest have been sustained by the Hon'ble Supreme Court and they have not



(14)

questioned the right of the Government to retire an officer prematurely under FR 56(J) provided the decision is a bonafide one and there is no arbitrariness involved. If the decision is in public interest and not actuated by malafides the courts by and large have refused to interfere. ~~with~~.

15. The O.M. of 1985 further clarified that one year period specified in the previous O.M. dated 5th January 1978 refers to ineffectiveness where officer need not be retired if he has only one year to go. But this certainly does not refer to cases of doubtful integrity. It has been clarified that damage to public interest would be marginal if an old employee in the last year of his service is found unfit. But damage may be incalculable and colossal if he is found corrupt and demands or obtains illegal gratifications during the said period for the task he is duty-bound to perform.

16. It is well settled that premature retirement under FR 56(J) is not a punishment, that there is no stigma and that no evil sequences follow. But there have been judicial pronouncements that this will not apply to cases where 56 (J) is a cover for what is in effect the punishment sought to be imposed on grounds of alleged misconduct. In such cases it has been envisaged that Article 311(2) of the Constitution gets attracted and therefore the principles of

B

65

natural justice will have to be followed and detailed departmental proceedings will have to be initiated. There is no scope for resorting to FR 56(J) in such cases. F.R. 56(J) is analogous to Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules 1958.

17. In the case of State of U.p. Vs. Chandra Mohan Nigam and Anr. 1978(1) SLR.12, it was observed : "We should hasten to add that when integrity of an officer is in question that will be an exceptional circumstance for which orders may be passed in respect of such a person under Rule 16(3) at any time, if other conditions of that rule are fulfilled, apart from the choice of the disciplinary action which will also be open to the government."

18. We have carefully scrutinised the ACR of the applicant in order to satisfy ourselves that there has been no miscarriage of justice in his case. The first 4-5 years of his service will indicate that his CRs are of a mixed type. Mr. S. Venkatesan, Additional Collector felt that "Will do better with experience and maturity". Collector, Central Excise, the same year remarked, "Still apt to be a little superficial." These remarks were communicated to him by the Board on 17.7.60 hoping that he will overcome the shortcomings mentioned in his ACRs. On 9.12.65, it was further recorded, "Judgment & Proportion: Below average. Relationship with

B

Public: Below average. Has displayed tactlessness on more than one occasion and thereby furnished evidence of lack of proper sense of proportion in dealing with public." About his Hongkong assignment the learned counsel for the applicant felt that he had long innings of 8 years instead of normal 3 years and it was because of his distinguished service. It is not so as would be evident from the perusal of the ACRs recorded during the time he stayed in Hongkong. About his stay from 6.8.77 to 31.12.77 the Commissioner of India in Hongkong wrote about him, "He has to face the suspicion and hostility of many members of Indian community here. He has shown skill in avoiding confrontation by maintaining a low profile." This remark was given by Mr. M.K. Mangalmoorthy, our Commissioner based in Hongkong. He was continuously getting adverse remarks from the time he returned to India and was posted in Delhi. On 1.1.80 to 30.2.82, Mr. A.K. Bandopadhyay, Member-cum-Additional Secretary, remarked "the pendency and pace of disposal of work in Delhi have not been satisfactory. Though some efforts have been made by him but improvement has not been good." He graded him as 'good' only. The reviewing authority and countersigning authority, however, felt that he could be rated as 'very good'. Again during the period 1.1.81 to 31.12.81, Mr. A.K. Bandopadhyay wrote, "The officer has not given a resume of the work done by him during the year under report. Mr. Julka

B

47

does not have much experience of Central Excise work. His service can be rated as just 'good'. Adjudication of work also needed speed. Rated 'good' only." It is surprising to find that except in Hongkong where one Commissioner remarked, "I had no occasion to question his integrity", the column of integrity has been left blank with no remarks. Right from the beginning till the end the integrity column is blank. Integrity can be either sound or doubtful or a non-committal one i.e. 'nothing adverse has been heard against him.' It is not understood why the integrity column remained blank in regard to a senior member belonging to Indian Revenue Service and holding important assignments in Government of India. It is with a purpose that we have quoted the above remarks only to connect the minutes of the Screening Committee as maintained in the secret file. The screening committee consisted of Mr. V.C. Pandey, Secretary, Revenue, Mr. R.K. Tikku, Establishment Officer, Government India. It is true that Mr. Tikku and also Mr. V.C. Pandey felt that ACRs alone should not be sole factor to judge the integrity of an officer. There have been judicial pronouncement to that effect also. As we have found the integrity column by and large has been blank or neutral. His knowledge of Central Excise rules has been adversely commented upon by Mr. A.K. Bandopadhyay, his immediate boss under whom he was working as Collector, Central Excise Customs, Delhi. It is



48

during this period that he indulged in all kinds of shady transactions in regard to files relating to Central Excise. The orders passed by Mr. Julka in various files might be due to the lack of experience and lack of knowledge of rules but the record shows that the rules were twisted to suit private parties for consideration. This is fully borne out by the instances quoted by Mr. J. Dutta in respect of several files. There are 5 cases mentioned in the relevant files all pertaining to private parties.

(A) The first relates to M/s Associated Strip (P) Ltd., Faridabad and M/s Haryana Fabricators. The file indicates that goods classifiable as electric poles under item No. 68 of CET has been shown as pipes and tubes and thus were exempted from payment of excise duty under notification No.69/73 CE dated 1.3.73. By this order the government suffered a loss of Rs.16.34 lacs and a careful perusal of the file will indicate that this was done with a view to help the private parties and the decision was malafide one. The Board had collected evidence from reliable sources that he took a bribe of Rs.65,000/- to pass this order.

(B) A case against M/s Shalakh Chemicals, New Delhi who manufacture Olemassa Baby Massage oil and E-Oil was made by the Anti Evasion Officer of the Excise Collectorate on 26.4.84 on the ground that the said products are liable for

B

69

duty under item 14-F (I) of Central Excise Tariff as it is a preparation for care of skin. The duty involved in this case was Rs.1.21 crores. The chemical examiner of the Department confirmed this and also stated that a similar product manufactured by Johnson & Johnson is being subjected to duty under item No.14-F(I). In spite of this Mr. B.B. Julka held in his order dated 17.10.84 that Olemassa baby massage is classifiable under item No.68 of the CET and is thus fully exempt from duty. These orders were passed in a hurry as it would be revealed from the relevant file. He fixed the case at a very short notice (a) without informing the officers in the Department, (b) without permitting the departmental officers to cross examine the private parties (c) without any intimation to them passing an adjudication order just before handing over charge, (d) handing over copy of the adjudication order to the parties representative personally on a day when he had ceased to be Collector. The normal procedure in all such cases is to send such orders by post.

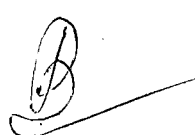
(C) The firm, M/s S.J. Nitty & Finishing Mill (T), Faridabad was booked in a case on 7.7.81 in respect of finished goods valued at Rs.3 crores which were not accounted for in the statutory records. The case was adjudicated by Deputy Collector Central Excise, Faridabad imposing a personal penalty of Rs.500/- and a redemption fine of Rs.1500/- on payment of duty

B

in respect of goods seized. Mr. Julka, the applicant, without any jurisdiction and legal authority called for the file and reviewed the orders setting it aside. The manner in which the orders were passed without jurisdiction and legal authority would go to prove that Mr. Julka did soil his hands and made money in this deal.

(D) On 26.3.82 the Central Excise Officer of Faridabad visited M/s S.G. Steels Pvt. Ltd., Vallabhgarh and recovered private records showing removal of 11684.63 metric tonnes of steel ingots valued at Rs.3.94 crores without payment of Central Excise Duty to their Rolling Mill situated in adjacent premises. The duty involved was to the order of approximately 25 lacs. The records of this case were summoned by Delhi Collectorate and show cause notice issued to the Unit only for removal of 452.910 metric tonnes ingots without payment of duty amounting to Rs.99,640.00 only. In this case also reducing the quantity from 11684 to 452.910 metric tonnes was deliberately planned to make money and Mr. Julka did make money in this deal also.

(E) In case of M/s Atul Glass Industries Pvt. Ltd., Faridabad, a dispute arose about classification in respect of toughened glass. The Range Officer classified the product under item 23(A) (4) of CET and the party obtained stay order from Hon'ble Delhi High Court. The party had the bank guarantee of Rs. 99 lacs mortgaged



with the Delhi Central Excise Collectorate. it seems that in a hush-hush manner Mr. B.B. Julka, the applicant quietly released the bank guarantee of Rs.99 lacs and the presumption is that he must have made a few lacs of Rupees in this deal.

19. A further perusal of the file will indicate acquisition and disposal of movable and immovable properties which the applicant disclosed under CCS(Conduct) Rules and there is no doubt about it that most of the transactions in which information was communicated appeared to be awefully shady. The file lists cases of wrong information about the rental value of house, the inheritance of properties and gifts to wife and sons and even permission obtained for a foreign exchange of \$ 11000/- for the study of his son, Vivek in USA etc. In regard to rental of the house located in Vasant Vihar, he rented it to the Consular of Republic of Korea at a exorbitant rent of Rs.15000/- per month but information given was Rs.5000/- per month. He purchased 500 square yards of land in the Employees Cooperative Society, Gurgaon. In case of Reserve Bank of India also it is found that his son was given \$2100/- when he was leaving India but subsequently it was shown that he returned that amount. He also imported lot of spares from the foreign countries for his imported car for which he sought permission on 18.1.83. There are many more financial transactions of several lacs of



Rupees which proved the acquisition of property disproportionate to Mr. Julka's known source of income and on the basis of all these well documented evidence ^{which} badly impinged on his integrity irresistible conclusion was drawn that he was a man of doubtful integrity and not fit to be retained in service and accordingly the government had no option but to retire him prematurely under FR 56(J) along with two other members of the Board and a few Principal Collectors/Collectors of Customs and Central Excise. In all these cases there was proven question mark about their integrity on the basis of concrete instances furnished by the Central Board of Excise and Customs. It was not a commissioned or tailored report. The files speak volumes about the conduct and character of this officer.

Atleast once in a while the Government were aroused from their dogmatic slumber and took a decision to retire officers whose integrity was found doubtful. We wish this process should have been continued and orders should have been passed under the same rule against other offices of doubtful integrity as well. It cannot be stated that these were the only officers of doubtful integrity and Government of India now consists of very clean officers and with the exit of these officers corruption has ended. We would like that the Screening Committees should be revived as a standing and permanent arrangement to

B

screen all officers of doubtful integrity before they reach the age of 50/55 years or they complete service of 25/30 years as the case may be.

20. Finally we would say that the foregoing observations are in conformity with the judicial pronouncements of the Hon'ble Supreme Court. In case of I.N. Saxena Vs. State of M.P. (1967) 2 SCR 496 page 501 Sc 1264 AIR 1967, it was stated, "But what he argues is that though order in question in this case contains no words from which any stigma can be inteferred or could have been cast on the appellant, we should look to the memorandum, which is referred to in the order and infer that a stigma was cast on the appellant because the memorandum at the end of paragraph 5 says that the power to retire will normally be exercised to weed out unsuitable employees after they attain the age of 55 years. It is urged that we should read those words in the order retiring the appellant from December 30.1.1963". It further adds that it is none of the job of the courts to read Secretariat files to infer stigma where there is none in the order. "where there are no express words in the order itself which throw any stigma onthe government servant, we cannot delve in Secretariat files to discover whether some kind of stigma can be inferred on such research". This was further



(54)

followed by the Hon'ble Supreme Court in the matter of State of U.P. Vs. Shyam Lal Sharma (1971_ 2SCC 514 (para 16).

21. A well settled rule of ^{Construction}~~Constitution~~ of statute is that, "where two interpretations are possible one of which preserves and saves the constitutionality of the particular statutory provision while the other would render it unconstitutional and void, one which saves and preserves its constitutionality should be adopted and the other rejected." In this case the facts and circumstances of the case clearly prove that Mr. B.B. Julka is a man of doubtful integrity and he has been prematurely retired under FR 56(J) and these provisions have the force of statute since these have been made under Article 309 of the Constitution. It is well established both in England and in India that the principles of natural justice yield to and change with the exigencies of different situations but do not apply to all situations which are not alike. They are neither cast in a rigid mould nor can they be put in a legal strait jacket. They are not immutable but flexible and can be adapted, modified or excluded by statute and statutory rules. FR 56(J) is a statutory rule which completely excludes the principles of natural justice. If legislation and instances of situation can exclude the principle of natural justice the Article 311 does not get attracted and as such there is no question of giving an

B

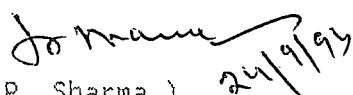
55

opportunity to the applicant or to observe the principles of natural justice in his case. A 7-Membered Bench of the Hon'ble Supreme Court has categorically reiterated that "where no stigma is attached and where premature retirement takes place under ^{specific} rule there is no scope for interference". Once a Government employee opts for a service, he is duty-bound by the rules which govern his service conditions and therefore Mr. Julka's ^{premature} retirement is governed by his ^{on ground of dishonesty integrity} service condition under FR 56(J). Mr. Justice Chhagla also upheld this in Srinivas Ganesh Vs. Government of India that "where retirement/removal from service is under a rule framed under Art. 309 of the Constitution and where no evil consequences follow and there is no stigma attached to the appellant, the order cannot be questioned by the courts".

22. In the light what has been stated above, we are of the view that there is no merit in the application and accordingly it is dismissed. The interim order, if any, for retention of the Quarter is also vacated.

There will be no order as to costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J) 24/9/93

V.P.G.