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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH,
NEW DELHI.

O.A.Nos.259 and 260 of 1987.

Date of Judgment: 10-12-1987.

A.N.Saxena ... Applicant in O.A.No.259/87.
S.L.Bahel ... -do- 260/87.
vs.

Chief Commissioner (Admn.)
& Commissioner of Income
Tax, Delhi-I, New Delhi ... Respondent in both.

For applicants: ... Shri R.Kapur, counsel, in both
applications.

For respondent: ... Shri P.H.Ramachandani, counsel.

CORAM:

The Hon'ble Shri S.P.MUKHERJI, Administrative Member
and
The Hon'ble Shri G.SREEDHARAN NAIR, Judicial Member.

(The Judgment of the Tribunal delivered by
THE HON'BLE SHRI G.SREEDHARAN NAIR)

The applicants in these two applications were working as Income-tax Officers, Group 'B'. They were compulsorily retired by the order of the ~~xxx~~ respondent issued on 6-2-1987, in exercise of the powers conferred by clause (j) of Rule 56 of the Fundamental Rules. They assailed these orders on the ground that their integrity had never been in doubt and that no communication of any adverse entry in their confidential reports has ever been made to them. It is also stated that as a matter of fact their services had been commended. According to the applicants, they have become the victims of action taken pursuant to the directions and exhortations of the Central Board of Direct Taxes for the identification of, and action

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against officers lacking in integrity and the fixation of a target for effecting compulsory retirement. There is also the plea that these applicants were permanent Group 'C' Officers officiating in Group 'B' post and as such under the relevant rules, they should have been given option to revert to the Group 'C' post if it was decided to retire them from Group 'B' post.

By way of reply, respondent contends that during the inspection of the work ^{of} ~~by~~ these applicatⁿ~~ions~~, several lapses were found in a large number of cases. Their cases were considered along with other Income-tax Officers in Group 'B' by a screening committee consisting of senior officers of the department. The matter was further examined by the Review Committee and the decision to retire them was taken with the approval of the Minister of State for Finance after following the prescribed procedure. It is pointed out that according to the second proviso to clause (j) of Rule 56 of the Fundamental Rules, the question of allowing the applicants in their substantive post of Group 'C' arises only on a request in writing made in that behalf by the applicants and that since no such request has been made, there is no violation of the proviso. The respondent has also taken up ^a preliminary objection that these applications are not maintainable as the applicants have not made a representation against the impugned orders to the representation committee.

The preliminary objection raised by the respondent may be considered first. It is contended that since the applicants have not pursued the remedy of filing representation against the

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orders compulsorily retiring them, before the representation committee constituted by the Government, the applications are not maintainable under section 20 of the Administrative Tribunals Act.

There is no merit in this contention. The aforesaid section no doubt prohibits the admission of an application under section 19 of the Act in a case where the applicant has not exhausted the statutory remedies available to him. But that is a matter to be considered at the stage of admission of the application. Even at that stage, the section does not lay down any absolute prohibition, for, the expression used there is only that the Tribunal shall not 'ordinarily' admit an application where the applicant has not exhausted the statutory remedies available to him. On the ground that the applicants have not chosen to make a representation before the representation committee, these applications cannot be dismissed at this stage as not maintainable.

We overrule the preliminary objection.

On merits as well, after hearing counsel on either side and on a perusal of the records, including the proceedings of the screening committee and of the review committee, and the confidential records relating to the applicants, which documents were made available by counsel of respondent, we are not persuaded to hold that the impugned orders are to be sustained.

The main thrust of the arguments of Shri P.H. Ramachandani, counsel of the respondent, was that the Government have absolute power to retire an employee prematurely on his completion of 25 years of qualifying service or 50 years of age and that the only consideration to be had is the public interest, and the applicants have been retired prematurely in exercise of the powers conferred

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under clause (j) of Rule 56 of the Fundamental Rules after a detailed examination of their working by a screening committee, which was subjected to a review by the Review Committee, and therefore the attack against the orders cannot be upheld.

We are not in a position to subscribe to this view. No doubt, the Government have absolute powers to retire an employee prematurely in public interest. As has been held by the Supreme Court in *BRIJ MOHAN SINGH CHOPRA V. STATE OF PUNJAB* (A.I.R.1987 S.C. 948) "the public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing with the services of those who are inefficient, dead-wood or corrupt and dishonest". The weeding out of those employees who are proved to be corrupt, dishonest, inefficient or lacking in integrity is certainly in public interest. However, a conclusion that a particular employee is corrupt, dishonest, inefficient or lacking in integrity has necessarily to be arrived at on the basis of reliable material. It is well-known that so far as employees in Government services are concerned, annual confidential rolls are being maintained relating to the assessment of certain qualities of general importance, such as integrity, intelligence, keenness, industry, tact etc. Short-comings of an employee are to find a place in his confidential report. As regards the filling up of the column relating to integrity, a detailed procedure has been laid down by the Ministry of Home Affairs in its O.M. dated 21-6-1965. In case of doubt relating to an officer's integrity, the column

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in the character roll has to be left blank, and a separate

secret note is to be recorded simultaneously and followed up

and as a result of the follow up action, if the officer is

exonerated, his integrity should be certified and an entry made

in the character roll. If, on the other hand, the suspicion

regarding the integrity is confirmed, it has to be recorded

and duly communicated to the officer concerned. The aforesaid

instruction is only in consonance with the general principle

that whenever an adverse entry is made against a Government

servant, it must be communicated to him, the object being

to afford an opportunity to him to make his representation,

if any, against the same or to improve himself. It is trite

without that ~~such~~ such communication, the adverse entry shall not be relied

upon against the Government servant, for any purpose, such as,

crossing of efficiency bar, denial of promotion etc. It cannot

be disputed that for the purpose of prematurely retiring an

employee as well, the same yardstick is to be applied.

A perusal of the confidential report of the

applicant in O.A.259 of 1987 discloses that during the five

years preceding the impugned order, his qualities have been

uniformly assessed as 'excellent', 'very good' and 'good'.

In the column relating to general observations, he has been

commended as an officer with special and good organisational

abilities and as a very sober and efficient officer. From

the proceedings of the screening committee as well it is clear

that the committee was not able to find anything worth mentioning

in his confidential report, against him. However, the committee

is seen to have doubted his integrity on the basis of two

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complaints stated to have been received against him in the year 1983 relating to the assessment completed by him with regard to a trust for the assessment year 1979-80. Several other cases of assessments made by him are also seen to have been examined by the committee, on the strength of which it was concluded that "serious doubts therefore arises about Shri Saxena's integrity in the matter of dealing with the above cases". It was on the strength of the aforesaid conclusion that the committee decided to retire the applicant in the public interest. It is pertinent to note in this context that in the column relating to integrity with regard to this applicant, during ^{none of the} ~~any~~ years prior to the impugned order, there is anything against him.

The confidential character roll of the applicant in O.A.260 of 1987 also discloses that the assessment of his qualities for a period of five years prior to the impugned order was as 'very good' and 'good'. This has been taken note of by the screening committee. However, on the basis of an entry in his character roll for 1935-86 by the reviewing officer to the effect that regarding the integrity of the applicant during the year, as two cases have come to his knowledge that the said applicant accepted the returned income after accepting affidavits to the effect that the minor assessee has purchased lottery tickets out of his own money, his integrity needs watching, the screening committee ~~is seen to have~~ made an attempt to examine the records on the basis of and came to the conclusion that on account of the manner in

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which he completed the particular assessment "he has emerged as an officer of highly doubtful integrity". The finding of the screening committee is seen to have been arrived at on the basis that a minor cannot have the means to purchase the lottery tickets.

When clear instructions have been laid down by the Government regarding assessment of integrity of an employee, the steps to be taken before arriving at a conclusion against the integrity of an employee, the need for communicating to the employee the adverse entry, if any, made in respect of integrity, so that he is enabled to make representation against the same and to have it expunged, it is opposed to the salutary principle underlying the aforesaid instructions to arrive at an assessment of lack of integrity on the mere examination of a few cases of assessments made by the

applicants and taking a decision without even affording an opportunity to the applicants to offer their comments with respect to the tax assessments in the particular cases. When it would be unjust, unfair and contrary to the principles of natural justice to prematurely retire an employee on the basis of adverse entries in his confidential reports which are not communicated to him, it will be more so if it is done when no such adverse entry exists at all in the confidential report. When the confidential report is the solemn document relating to the assessment of the various qualities of the employee including his integrity, dehors the same, if a

decision is arrived at regarding the integrity of the employee on an unilateral examination of some other records behind the back of the employee, it is violative of all canons of justice and fair-play, and if an employee is prematurely retired solely on its strength, such retirement cannot be upheld.

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As regards the point taken up by the applicants that the order of retirement is bad, since they are only officiating in Group 'B' post and as such the option which should have been given to revert to their substantive post in Group 'C' has not been given, it is not legally sustainable. It is clear from the wording of the second proviso ⁶ clause (j) of Rule 56 of the Fundamental Rules if that it is only a request is made in writing by the employee to continue in service in the substantive post that the question is to be considered by the review committee. Admittedly none of the applicants has made such a request.

It follows that the impugned orders retiring the applicants are to be quashed, and we do so. The applicants shall be treated as being in service without break and shall be entitled to salary, allowance and other benefits admissible as per the rules.

These applications are allowed as above.

(G. SREEDHARAN NAIR)
Member (J)

(S. P. MUKHERJI)
Member (A)

S.v.