

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH
NEW DELHI.

O.A. 515 of 1987.

D.K.Sinha ... Applicant.
-versus
Union of India and another.. Respondents.

P R E S E N T :

The Hon'ble Sri G.Sreedharan Nair, Vice Chairman

The Hon'ble Shri P.C.Jain, Member(Admn).!

For the applicant- Shri Ashok Aggarwal,
Shri Nitya Ramakrishna, Advocates

For the respondents- Sri J.K.Sibal, A.S.G.

Date of Order - 16.5.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman:

The applicant while working as Income-tax Officer was compulsorily retired from service on 5.2.1987 in exercise of the powers conferred by Clause (j) of Rule 56 of the Fundamental Rules. The applicant has prayed for quashing the order. It is urged by him that ever since he joined the services of the second respondent as a direct recruit Class-II officer in the year 1969 he has been holding important and sensitive posts and that there has not been any occasion of any adverse entry in his confidential reports. It is asserted that all along he has ^{had} a brilliant career record. It is pointed out that the power conferred under Clause (j) of Rule 56 of the Fundamental Rules is for removing inefficient and corrupt elements in public service and that the exercise of the power to retire him is mala fide and illegal.

2. In the reply filed on behalf of the respondents, a preliminary objection raised is that the application is not maintainable for an order under Clause(j) of Rule 56 of the Fundamental Rules cannot be questioned in a Court of Law. It is contended that the order to retire the applicant was passed in public interest, on an

objective consideration of all the relevant materials and records and on the basis of the recommendation of the Screening Committee and the Review Committee.

3. The preliminary objection regarding the maintainability of the application was rightly not pressed by the counsel of the respondents. The order of compulsory retirement under clause (j) of Rule 56 of the Fundamental Rules is open to judicial review. No doubt, during such review the Tribunal is not to assume the role of a Court of appeal. But it is open to the Tribunal to go into the question as to whether the order was based on relevant materials and whether it was issued bona fide. Reference may be made in this context to the Full Bench decision of this Tribunal in B.N.Rangwani v. Union of India, (1987) 3 ATC 971/.

4. The paramount consideration to be had by the competent authority in making an order of retirement in exercise of the powers conferred under Clause (j) of Rule 56 of the Fundamental Rules is the public interest that is ~~involved~~ important. Before issue of the order, the competent authority is to arrive at the opinion that it is in the public interest to retire a Government servant. It is trite that the compulsory retirement of a Government servant on the ground of ineffectiveness is in public interest. It is equally settled that a Government servant of doubtful integrity can also be retired in public interest.

5. In the instant case, the order retiring the applicant does not even state that the retirement is made in the public interest. It may be stated that

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as there is a reference in the order to clause (j) of Rule 56 of the Fundamental Rules, it can be assumed that the order has been issued having regard to the public interest. When the applicant has specifically alleged that both his integrity as well as efficiency are unquestionable having been acknowledged throughout his service period and, as such, no public interest is involved in his retirement, it behoved the respondents to state in the reply ~~on~~ the ground on which the retirement was made. It is significant that the mention of the ground is conspicuous by its absence in the reply. On a reading of the reply one cannot understand whether the retirement of the applicant was on account of ineffectiveness, or of doubtful integrity. The absence of an assertion in the reply about either of these cannot be brushed aside. There is only the omnibus plea that " all the relevant material for the relevant period including ACRs were considered and on the basis of the appreciation of his overall work, the decision to retire him was taken in public interest". Though it is stated in the reply that " the ACRs of the applicant speak for themselves and will be shown to the Hon'ble Tribunal whenever the same are required" and that " the records pertaining to the decision to retire the applicant shall be produced to show the manner in which his case was considered in a proper manner as required by law", the respondents have not produced the confidential reports of the applicant. At any rate, the categoric assertion of the applicant in the application that " the applicant has had a uniformly brilliant record of service (his ACR has consistently borne entries of 'Very Good' and 'Outstanding') and there is not even one adverse entry against him in the service record" has not been controverted. Nor is there, at the risk of reiteration, an assertion about the ineffectiveness or doubtful integrity on the part of the applicant.

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6. At the time of hearing, on our request, the counsel of the respondents submitted the proceedings of the Screening Committee, from which we have noticed that the attempt of the Screening Committee was to bring the case of the applicant under ^{both} the aforesaid ~~both~~ the grounds. An alleged "deterioration in performance" has been highlighted based on the grading "Very Good" only, since during the earlier year he was graded "Outstanding". If this is considered as deterioration in performance to stamp a Government servant with "ineffectiveness" so as to warrant his compulsory retirement, we are afraid, it will create a dangerous precedent. In our view, to arrive at a conclusion of ineffectiveness, there has to be consistent adverse entries in the confidential reports with respect to the performance of the Government servant. It has to be shown despite such entries having been brought to the notice of the Government servant there has not been any improvement in performance.

7. On the question of integrity, clear instructions have been laid down by the Government regarding its assessment in relation to a Government servant. 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 a representation against the same, are also covered by those instructions. The Annual Confidential Reports are actually maintained so as to assess and record certain qualities of general importance of the Government servant, such as integrity, intelligence etc. The Office Memorandum dated 21.6.1965 issued by the Ministry of Home Affairs affords detailed instructions regarding the filling up of the columns in the Confidential Reports, relating to the integrity of the Government servant.

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8. There is no case for the respondents that in any of his confidential reports his integrity has been doubted. The proceedings of the Screening Committee reveal that it was based on the examination of a few cases of tax assessment made by the applicant years ago that the conclusion of doubtful integrity was arrived at. For the exercise of the powers conferred under Clause (j) of Rule 56 of the Fundamental Rules, it may be desirable to make an overall assessment of the record of the Government servant, but that, in our view, does not warrant a raking up of certain tax assessment cases of the past with a view to find out some materials to doubt the integrity of the officer concerned.

9. An identical question arose for consideration before a Bench of this Tribunal, of which one of us (G.Sreedharan Nair) was a member in the cases of two other Income-tax Officers who were also compulsorily retired under similar circumstances. ~~That case is~~ A.N.Saxena and another vs. Chief Commissioner(Admn), (1988) 6 ATC 320/. We extract the ratio of that decision :-

" 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, de hors 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 fairplay, and if an employee is prematurely retired solely on its strength, such retirement cannot be upheld."



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10. We have also to point out that it is seen from the proceedings of the Screening Committee that when the case of the applicant for compulsory retirement was recommended earlier, the Review Committee did not agree and that thereafter the case was put up a second time pointing out the aforesaid tax assessments. The proceedings of the Review Committee have not been made available for perusal.

11. We hold that the impugned order dated 5.2.1987 retiring the applicant is unsustainable in law. It is hereby quashed. The applicant shall be reinstated in service forthwith and shall be deemed as having been in continuous service. He shall be allowed all consequential benefits within a period of three months from the date of receipt of the copy of this order.

12. The application is allowed as above.

Dec: 17/5/1990
 (P.C.Jain)
 Member (Admn)

12/5/90
 (G.Sreedharan Nair)
 Vice Chairman.

S.P.Singh/
 14.5.90.