

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**No. OA 865 of 2019**

**Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)  
Hon'ble Mr.T.Jacob, Member (A)**

Surendra Singh Bisht (Gr.A), aged about 54 years, S/o Late Mohan Singh Bisht, was working as Asst. Commissioner, GST & Central Board of Excise & Customs, Rourkela-12.

.....Applicant

VERSUS

1. The secretary to Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, North Block, New Delhi-110001.
2. The Chairman, Central Board of Excise & Customs, North Block, New Delhi-110001.
3. The Deputy Secretary to Government of India, Ministry of Finance Department of Revenue, Central Board of Indirect Taxes & Customs, North Block New Delhi-110066.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.A.K.Mohapatra, counsel  
Mr.A.Mallick, counsel

Heard & reserved on : 11.2.2021

Order on :09.07.2021

**O R D E R**

**Per Mr.Swarup Kumar Mishra, J.M.**

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- “(i) To quash the Orders dated 18.06.2019 (Annex.A/1 Series), order No. C-50/78/2019-Ad.II, dated 21<sup>st</sup> November, 2019 (Annex.A/4) and consequently direct the Respondents to re-instate the applicant with full salary/pay and continuity of service and all his consequential service and financial benefits;
- (ii) And further be pleased to quash the decision of the representation committee communicated through order dated 07.12.2020 under Annexure A/8;
- (iii) To allow this OA with costs towards compensation;
- (iv) To pass any other order/orders as deemed fit and proper.”

2. The facts of the case in a nutshell are that while working as Assistant Commissioner of Central Excise and Customs, the applicant received an order dated 18.6.2019 (Annexure A/1 series) retiring him from service with immediate effect under FR 56(J) and thereafter he could ascertain from the Ministry of finance Website the reason of retiring him compulsorily by invoking

the provision FR 56(J) in the garb of public interest due to one pendency of CBI FIR in 2013. It is averred by the applicant that on the said CBI FIR of 2013 after a lapse of more than six years the IO of CBI submitted before the Learned Trial Court on 29.3.2019 that sanction of prosecution against the accused persons including the applicant are still awaited. At this point of time the applicant received the order of compulsory retirement under FR 56(J) on the ground of pendency of CBI Trap case in 2018 and CBI DA case. In both the cases no charge sheet has been filed till date. Therefore the applicant has submitted that exercising of power available under FR 56(J) by quoting public interest is malafide exercise of power and the order being void ab initio should be quashed. The applicant had earlier approached this Tribunal in OA 418/2019 which was disposed of on 6.8.2019 (Annexure A/2) granting liberty to the applicant to make representation to the Review Committee. On 19.8.2019 the applicant submitted representation (Annexure A/3) which was rejected vide order dated 21.11.2019 (Annexure A/4). Vide order dated 23.7.2020 (Annexure A/7) the earlier order dated 21.11.2019 (Annexure A/4) has been withdrawn and on 7.12.2020 (Annexure A/8) further order was passed by the newly constituted Review Representation Committee. The applicant has submitted that withdrawal of the order passed by one Committee in the name of illegality for consideration by another Committee is not sustainable in the eyes of law as no such provision is available in the statute giving Representation Committee or any other authority to review the earlier order or to reconsider any decision. It is also stated that the respondents have withdrawn the order of rejection dated 21.11.2019 (Annexure A/4) vide order dated 23.7.2020 and restored the original order dated 18.6.2019 prospectively. When the order of rejection is held to be bad and the same has been withdrawn, the order of rejection is bad in law from inception. It is trite law that if the original order is void ab initio, subsequent order justifying the order cannot have the sanction of law. It is also trite law that when an order is bad in its inception, the same cannot be justified by subsequent ground provided in the order. Hence the applicant has filed the present OA.

3. The respondents have filed their Counter stating that the applicant has been compulsorily retired under FR 56(j) as per the extant law and procedure. The applicant has alleged that procedure prescribed in DOPT OM dated 11.10.1976 has not been followed. But the respondents have stated that procedure laid down in DOPT OM dated 21.3.2014 and 11.9.2015 have been followed strictly in the case of the applicant. It is submitted that the CBI in their case based on source intercepts, launched investigation in a case of criminal conspiracy against the applicant with some other officers who alleged to have demanded and accepted pecuniary favour and illegal gratification for processing import/export related work of an agency in Kolkata. The CBI recommended RDA for major penalty proceedings against the applicant and filed a final report in the court of Spl. Judge, CBI, New Delhi seeking closure of the criminal case on the ground that there were no sufficient evidences in the case. The CBI Court vide order dated 23.4.2015 declined closure of the case and held that prima facie offences have been committed by the accused persons and there was sufficient material and evidence in the charge sheet to proceed against the accused persons including the applicant. The Court directed CBI for further investigations and CVC vide OM dated 1.6.2016 advised initiation of major penalty proceedings against the applicant. It is also submitted that the representation was not rejected by the Representation Committee on the ground that he was arrested by CBI and placed under suspension. The representation dated 19.8.2019 was disposed of since the Representation Committee has noted that the Review Committee found that the case of the applicant to be a fit case for action under FR 56(j), inter alia for the reasons that he was placed in the Agreed List for the year 2015-16 and 2016-17 and thereafter in ODI list from 2017-18 onwards till 2018-19 and that CBI has registered a criminal case against the applicant along with some other officers. The Representation Committee also took note of the fact that CVC has advised prosecution and initiation of RDA for major penalty proceeding against the applicant. The Representation committee also noted that in the order of Hon'ble High Court dated 3.7.2017 relied upon by the applicant, the applicant

was not a party and that the prosecution case of the applicant is still pending and it is incorrect to say that the cause of action against the said FIR has become invalid. The Committee also observed that the officer has been compulsorily retired on the ground of doubtful integrity in public interest. It is further observed by the Representation Committee that CVC has recommended prosecution against the applicant in 2016, the competent authority has since sanctioned the prosecution proceedings and since this Tribunal vide order dated 14.3.2019 has granted stay on the department proceeding, the Inquiring Authority's report is still pending. Hence the contention of the applicant that his representation was rejected on the factual inaccuracies, is not correct. It is also submitted by the respondents that FR 56(j) does not require that any opportunity should be given to the concerned government servant to show cause against his compulsory retirement and the Government has an absolute right to retire any government servant in public interest. Further, it is submitted that as per the DOPT Om dated 31.3.2014, if the compelling reason to retire under Rule 56(j) rests on integrity, consideration of entries in APARs does not apply. Moreover, the respondents have submitted that the action under FR 56(j) has been taken for the purposes covered under the said rule and an order of compulsory retirement does not in law constitute any penalty,. The retired employee is entitled to all such benefits and the order of compulsory retirement does not in any manner prejudice or creates any stigma against the applicant. The respondents have therefore prayed for dismissal of the present OA

4. Learned counsel for the applicant has placed reliance on the following decision in support of his case :-

- i) State of Gujrat -vs- Suryakant Chunilal Shah [1991 (1) SCSLJ 1]
- ii) Rajesh Gupta -vs- State of J & K [(2013) 1 SCC (L&S) 657]
- iii) State of UP -vs- Chandra Mohan [AIR 1977 SC 2411]
- iv) Mohd. Islam Khan -vs- Military Secretary to the President of India & Ors. [(1987) 2 ATC 424]

The respondents have relied on the following decisions in support of their case :-

- i) Baikuntha Nath Das & Anr. -vs- Chief Distt. Medical Officer, Baripada & Anr. [1992 AIR 1020]

- ii) S.Ramachandra Raju -vs- State of Orissa [1994 Suppl. (2) SCR 828]
- iii) Shyam Lal -vs- State of UP [AIR 1954 SC 369]
- iv) UOI -vs- M.E.Reddy & Anr. [1980 (2) SCC 15]
- v) State of Bihar -vs- P.P.Sharma, IAS & Anr. [(1984) 2 SCC (Supp.)8]

5. We have heard both the learned counsels and have gone through the pleadings on record.

6. The applicant who was working as Assistant Commissioner of Central Excise and Customs has been compulsorily retired by the order of Hon'ble President of India in public interest after he had attained the age of 50 years as per the order dated 18.6.2019 vide Annexure A/1 under 56(J) of FRSR. The consequential order to that effect was also passed on that date relieving the applicant from duty.

7. The applicant had earlier filed one OA 418/2019 and the said OA was disposed of on 6.8.2019 (Annexure A/2) observing and directing as under :

"11. ....Therefore, the OA is disposed of at the very threshold with observation that if the applicant submits a representation to the competent authority as per the DOP&T OM dated 11.10.1976 within three weeks from the date of receipt of this order, then the said authority will consider the said representation against the impugned order under the FR 56(j) in accordance with the law treating it to have been filed within time as in OM dated 11.10.1976 and dispose of the same in accordance with the OM dated 11.10.1976. It is clarified that no opinion has been expressed by this Tribunal on merit of the case. No costs."

The representation committee had issued the order vide Annexure A/4 dated 21.11.2019. It was submitted by learned counsel for the applicant that in the said decision of the representation committee vide Annexure A/4 it was mentioned that the accused was arrested by the CBI, he was placed under suspension w.e.f. 14.1.2013, CPC had advised for his prosecution and sanction for prosecution of the applicant has been given,. Besides that it was also mentioned that departmental proceeding against the applicant is under way. After disposal of the OA as per order vide Annexure A/2 the applicant had submitted his representation to the representation committee. The representation committee vide their order dated 23.7.2020 (Annexure A/7) withdrew their earlier order dated 21.11.2019 vide Annexure A/4 mentioning that the said earlier order was passed on certain incorrect facts. In this regard learned counsel for the applicant had submitted that the representation

committee had no power to review the earlier order passed vide Annexure A/4 by the then representation committee.

8. It was submitted by learned counsel for the applicant that the materials on record and specially the decision of the representation committee reveal that the applicant has not been compulsorily retired on the ground of inefficiency in his official performance but on the ground of doubtful integrity and public interest. He has further submitted that in all the APARs of the relevant period including that for the year 2018, the concerned authorities have mentioned that applicant's integrity is beyond doubt. In this regard learned counsel for the applicant submits that there is absolutely no material for the Hon'ble President or by the review committee to come to the conclusion that the applicant was of doubtful integrity. In reply to the said submission made by learned counsel for the applicant, learned counsel for the respondents has submitted that the name of the applicant was found in the Agreed List for the year 2015-16 and 2016-17 and thereafter in ODI list from 2017-18 onwards till 2018-19 and therefore the said action has been taken by the review committee for compulsory retirement of the applicant. In this background learned counsel for the respondents has relied upon the decision passed by Principal Bench of CAT in OA 3302/2019 dated 21.1.2020 wherein it has been held that the ground of doubtful integrity will be sufficient enough to compulsorily retire one Government officer. Learned counsel for the respondents has also relied upon the decision of Principal Bench of this Tribunal in OA 703/2020 disposed of on 9.12.2020 and the decision in OA 138/2020 (Ashok Kumar Aggarwal -vs- UOI) disposed of on 18.12.2020. It was submitted by learned counsel for the respondents in the said case of Ashok Kumar Aggarwal that although the said person was accused in the criminal case and the departmental proceeding started against him was quashed, still then the action taken by the authority in compulsorily retiring the said person was not interfered by the Tribunal.

9. Learned counsel for the applicant had submitted that since the ground as revealed from the order vide Annexure A/4 passed by the representation committee is that the ground regarding arrest and suspension of the applicant

and sanction of his prosecution were taken into consideration and the said fact being found to be not correct, it shows total non-application of mind by the review committee. It is further submitted by learned counsel for the applicant as a necessary corollary the order passed by the review committee and subsequent order of compulsory retirement vide Annexure A/1 are vitiated.

10. It was submitted by learned counsel for the applicant that in the web portal of the department as shown in Annexure A/6, the applicant's name is at Sl. No.11 and it was mentioned under the column 'Remarks' that "Bribe cases of Rs.10 lakh from one M/s Universal Agency, Kolkata for grant of permission for transportation of fertilizers and other materials to Nepal. The CBI registered FIR bearing No. RC 1(A)/2013-ACIII dated 04.01.2013 in the matter". He was further shown in another list wherein it was mentioned that charge sheet has already been submitted against the said person for alleged commission of offence, but so far as the applicant is concerned no charge sheet has yet been submitted against him. In this regard he has submitted that the investigation agency i.e. CBI has submitted closure report in the case started against him before the concerned Learned CBI Court and therefore the mere pendency of the criminal case against the applicant should not have been the sole ground to compulsorily retire him from service. In this regard learned counsel for the applicant has relied upon the decision in State of Gujrat -vs- Suryakant Chunnilal Shah [1999 (1) SCSLJ 1]. In reply to the said submission, learned counsel for the respondents has submitted that the closure report submitted by the investigation agency i.e. CBI was not accepted by the CBI Court and later has directed for further investigation as per Section 173(1)(a) of Cr.PC. It has been averred in the OA that the Hon'ble High Court of New Delhi has stayed the order passed by Learned CBI Judge by which direction was given for further investigation by CBI.

11. Learned counsel for the applicant by relying on the decision in the case of State of Gujarat -vs- Suryakant Chunnilal Shah [1999 (1) SCSLJ 1] has submitted that it was for the appointing authority or superior authority of the applicant to pass any remarks with regard to the integrity of the applicant and

Hon'ble Supreme Court has held that it is not the duty of the review committee to give any such findings or remarks of integrity of the Government employee. That the name of the applicant is also mentioned in the list of persons with doubtful integrity as mentioned in Annexure A/4 and A/5 series.

12. More documents have been produced from the side of the respondents in a sealed cover as per the order passed by the Tribunal in this OA on 2.9.2020 and were not opened as the same was not felt necessary. Learned counsel for the applicant has relied on the decision in the case of Rajesh Gupta -vs- State of J & K [(2013) 1 SCC (L&S) 657].

13. In this context we would like to refer to the order passed by Principal Bench of this Tribunal in OA 1835/2020 (Askhok Kumar Aggarwal -vs- UOI & Ors.) wherein it has been observed as under while dismissing the OA :

“29. Coming to the first ground, an order of compulsory retirement can certainly be set aside, in case it is the result of the malafide exercise of power. Reference in this context can be made to the judgments of the Hon'ble Supreme court in –

Union of India -vs- M.E.Reddy [1980 (2) SCC 15]/1980 AIR 563

K. Kanda Swamy -vs- Union of India [1995 (6) SCC 162]

Nisha Priya Bhatia -vs- Union of India in Civil Appeal No. 2365/2020

30. In the context of examining the plea of malafide, an important aspect is that the one who alleges it must name the officers or authorities, who caused him wrong and make them parties, to the proceedings, by name. It is only after hearing the version of both the parties, to the proceedings, by name. It is only after hearing the version of both the parties that a finding can be recorded in this behalf.

31. It is not the case of the applicant that any particular officer or authority in the hierarchy, had any prejudice or enmity against him and that led to passing of the order of compulsory retirement. The legal proceedings involving the applicant are spread over two decades. Authorities and even Governments changed. It is impossible to hold that the same tendency continued against the applicant throughout notwithstanding those changes.

32. further, the occasion does permit the invocation of legal notice also. Once it is held that the State has the prerogative to invoke FR 56(j), depending upon it, subjective satisfaction, the exercise in that behalf cannot be branded as malafide, in the absence of specific instances, personal or departmental prejudice and proof thereof.”

Further reference is made to the decision of the Principal Bench of this Tribunal in OA 703/2020 (Capt. Pramod Kumar Bajaj -vs- UOI & Ors.) wherein while dismissing the OA it was observed as under :

“31. Even while observing that the ACRs of an employee can be one of the factors to be taken into account in the context of invoking Rule 56(j), it was clarified beyond any pale of doubt that they are not the conclusive



factors to decide the course of action. Even where the ACRTs of an officer are outstanding, the propensity to the challenge or to deviate from the ordinary conduct cannot be ignored.”

14. Hon’ble Supreme Court in the case of State of Gujarat –vs- Umedbhai M.

Patel [2001 (3) SLJ 285 (SC)] has held that –

“The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarized 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 un-communicated 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.
- (viii) Compulsory retirement shall not be imposed as a punitive measure.

15. No malafide has been specifically pleaded or proved against any particular authority of the respondent department. The citations relied upon by learned counsel for the applicant are not applicable to the facts and circumstances of this case.

16. In view of the above discussions, we find no merit in the OA and the same is dismissed. There will be no order as to costs.

(T.JACOB)  
MEMBER (A)

(SWARUP KUMAR MISHRA)  
MEMBER (J)