



Central Administrative Tribunal Principal Bench, New Delhi

**O.A. No.2640/2019
MA No. 1430/2020**

This the 2nd day of July, 2021

(Through Video Conferencing)

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

Sh. S.S. Das (Group 'A')
Former Development Commissioner,
MIHAN SEZ Nagpur,
Under Department of Commerce
Ministry of Commerce and Industry
S/o Sh. Bigyan Chandra Das,
Aged about 56 years,
R/o 1186, Sector-I, Pocket-A,
Vasant Kunj, New Delhi-110070

- Applicant

(By Advocate: Mr. Anurag Ojha)

VERSUS

Union of India
Through its Secretary,
Ministry of Commerce & Industry,
Udyog Bhawan, New Delhi

- Respondent

(By Advocate: Mr. Rajeev Kumar)

ORDER (ORAL)

Justice L. Narasimha Reddy:

The applicant joined the Indian Trade Service (ITS) in the year 1989. He was promoted to the post of Deputy Director General of Foreign Trade (DGFT), in 1994 and was further



promoted to the post of Joint DGFT in the year 2001. He was also promoted on Non Functional Selection Grade (NFSG) basis in the year 2006 and was selected for Central Deputation under Central Staffing Scheme, in the year 2008. Another Non Functional Upgradation (NFU) was given to him, in the year 2011 and he became Director in the Directorate General of Anti Dumping (DGAD) in the year 2014. He was posted as Regional Joint DGFT, Guwahati and Shillong in the year 2017. He was put in the Senior Administrative Grade (SAG) of ITS, at the level of Joint Secretary, on 16.11.2017 and was promoted on regular basis to SAG on 27.02.2018.

2. On 10.05.2018, the Appointing Authority of the applicant passed an order retiring him from service, before he attained the age of superannuation, by invoking power under FR 56(j). A review petition submitted by the applicant was rejected on 13.06.2019. This OA is filed, challenging the order of premature retirement dated 10.05.2018, and order of rejection of the review, dated 13.06.2019.

3. The applicant contends that his service record is without any blemish and he earned several promotions on time. He submits that at no point of time, he faced any disciplinary proceedings and his ACRs were also consistently rated as high. He contends that there was absolutely no justification or basis for the respondents, to invoke power under FR 56(j) against him.

Another contention of the applicant is that the order of premature retirement was passed by doubting his integrity and such a step could have been taken, only in consultation with the CVC and that in the instant case, no consultation was undertaken with CVC. Several other grounds were also urged by the applicant.



4. The respondents filed a detailed counter affidavit opposing the OA. They contend that as part of cleansing the Administration of Anti-dumping Department and for ensuring transparency, a high level Committee was constituted to review the cases of various officers, who have crossed the age of 50 years. It is stated that the Committee examined the relevant service records of various officers and recommended the case of the applicant, for premature retirement. They contend that several observations were made by the concerned authorities at different points of time in the ACRs of the applicant, doubting his integrity and expressing discontent about his functioning. It is also stated that the applicant was occupying a very senior and sensitive position in the department and any small deviation from the prescribed norms is bound to have its impact on the functioning of the department and adversely affecting the interests of the country. Various contentions urged by the applicant are also denied.

5. We heard Mr. Anurag Ojha, learned counsel for the applicant and Mr. Rajeev Kumar, learned counsel for the respondents.



6. This is a case of premature retirement of an officer, by invoking power under FR 56(j). The law is fairly very well settled in this regard. After reviewing the judgments rendered by itself at different points of time, the Hon'ble Supreme Court summed up the guidelines, that are relevant for reviewing the domain of this nature. In the case of **Baikunthanath Das & others v. Chief District Medical Officer, Baripada & others**, (1992) 2 SCC 299, their Lordships summarised the principles as under:

“32. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order.



(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interfere. Interference is permissible only on the grounds mentioned in (iii) above.”

7. From the above, it is evident that: (a) the order of premature retirement is not a punishment; (b) the service of the officer needs to be examined in its entirety; and (c) once there exists material for the authority to exercise the power under FR 56(j), the Tribunal or court cannot go further to assess the adequacy thereof.

8. It is true that the applicant earned several promotions at different points of time and nothing like initiation of disciplinary proceedings occurred against him, particularly, after he was last promoted at later stages. In **State of Gujarat vs. Umaidbhai M. Patel**, 2001(3) SCC 314, the Hon'ble Supreme Court took a view that in case an officer is promoted and nothing adverse is noticed after such promotion, the invocation of FR 56(j) in such

cases cannot be sustained. However, a different view was taken in subsequent judgments such as **Pyare Mohan Lal Vs. State of Jharkhand (2010) 10 SCC 693** and **Punjab State Power Corporation Vs. Hari Kishan Verma, (2015) 13 SCC 156**.

It is with reference to these principles, we need to examine the case in hand.



9. It may be true that the applicant did not face any disciplinary proceedings in his career. The fact, however, remains that he was holding a very sensitive post, having serious financial implications for the country and there were instances where certain deviations were noticed on his part. After reviewing the cases of officers, who have crossed 50 years of age, the Committee observed in the case of the applicant as under:-

“f) Shri S.S. Das (ITS-1989) – The Committee noted that intent and conduct of Shri Das, while dealing with files as well as with clients, has been obstructive and questionable. He does not hold a good reputation in terms of integrity. This fact is borne out by entries in his APAR dossier. On few occasions, during different spells of his posting in DGAD, his unprofessional conduct has been taken on record also. In one case Shri Das was charged with insubordination. In another case, it has been reported that the officer’s approach in handling the cases has been unprofessional and of questionable integrity.

The Committee noted that the officer was recently promoted to the post of Additional DG. However, it was observed that as at the time of the promotion, the officer was technically clear from vigilance angle (in terms of extant instructions of DoPT on granting vigilance clearance for promotion), the officer was promoted.

The Committee recommended compulsory retirement of the officer in public interest, taking into account the

questionable reputation and conduct of the officer.



10. The observations made by the Committee are neither casual nor abstract. They are matters of record. The very basis for invoking the power under FR 56(j) is that in certain sensitive matters, it may not be possible to prove any act of misconduct against certain officers and the best way to protect the public interest and to get rid of such officers is to send them out, even by protecting their retirement benefits. In **S. Ramachandra Raju vs. State of Orissa**, the Hon'ble Supreme Court observed as under:-

“The officer would live by reputation built around him. In an appropriate case, there may be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace in public service and injurious to public interest.”

11. Similar observations were made in many judgments of the Hon'ble Supreme Court. As a matter of fact, in their OM dated 11.09.2015, the Department of Personnel & Training (DoPT) had taken note of the observations made by the Hon'ble Supreme Court in various judgments and framed certain guidelines. One of them is that where the cases of Group 'A' officers, who are ACC appointees, are to be considered, the Review Committee shall be headed by the Secretary of the concerned Ministry/Department as Cadre Controlling Authority. When the review is undertaken at such a high level, the mere fact

that the file was not routed through different agencies for consultation, hardly makes any difference. It was mostly in respect of officers, who are not so senior that consultation with CVC becomes necessary.



12. The gist of assessment undertaken by the Review Committee has already been furnished in the preceding paragraphs. The respondents have elaborated the same in the counter affidavit. It is also mentioned that complaints were received from various circles that the applicant, while occupying the position referable to Anti-Dumping, demanded several favours. It may be true that there is no proof about such demands. However, that would be a requirement in the case of disciplinary proceedings. While exercising power under FR 56(j), the Appointing Authority can take note of such allegations. Once the employee is fully granted of his retirement benefits, and is retired, a bit earlier, than in the usual course, the exercise referable to punitive action is not necessary.

13. In **Ashok Kumar Aggarwal** vs. Union of India & Anr. (OA No. 1835/2020), the Tribunal observed as under:-

“38. The situation may not have existed for imposition of penalty. However, the gist of judgments of the Hon’ble Supreme court on the subject is to the effect that the overall record of the employee can certainly be taken into account. At the end of the day, it is the subjective satisfaction of the appointing authority, which in turn is not easily available for judicial review, compared to other administrative decisions.



39. A close scrutiny of the provisions under Para XXIV of the Constitution of India, in which Articles 308 to 314 occur; or the CCS (CCA) Rules or Fundamental Rules, would reveal that even while the several protections are accorded to the civil servants, the administration is conceded with the power to punish or dispense with the services of the employees depending upon the proof of acts of misconduct or on existence of material to show that it is not feasible to continue the employee in service. While holding of inquiry into the allegations of misconduct, is the norm that can be dispensed with in exceptional cases covered by the 2nd proviso to Article 311 (2) (b) and the corresponding CCS (CCA) Rules.

40. The hardship caused to the civil servants on account of dismissal from service after an inquiry under Rule 14 of the CCS (CCA) Rules or by invoking the provisions akin to Article 311 (2), is phenomenal, if not colossal. The pension, which is almost in the form of estate, stands withdrawn. Other attendant benefits, which are provided as a reward for the service rendered by the employee for major part of his life are forfeited. In contrast, the compulsory retirement under FR 56(j) would have the effect of just advancing the age of retirement and nothing more. The State feels that it would be safer for it, in case the employee is not on its rolls for the remaining part of his service. Roughly stated the major punishments such as dismissal and removal are almost lethal weapons, whereas compulsory retirement is just a tranquilizer. Obviously for that reason, the Hon'ble Supreme Court had reduced the interference with such orders to the bare minimum. Exceptions are where order is tainted with malafides or there does not exist any material to warrant such a plea at all. Such grounds, however, do not exist in this case."

14. Almost the same situation obtains in this case also. In the review also, various points urged by the applicant were taken into account and the order of premature retirement was also referred to.

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

Pending MA, if any, shall also stand disposed of.

There shall be no order as to costs.



(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/lg/sd/jyoti/