

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.881/2020
MA No.1104/2020



Order Reserved on:01.03.2021
Order Pronounced on:18.03.2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman,
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Dr. Ashok Kumar Aswal,
S/o Sh. JP Aswal,
R/o M-80 (2nd Floor), Guru Harkrishan Nagar,
Paschim Vihar, New Delhi-87

Aged about 51 years,
(Group 'A')
(Deputy Commissioner – Customs & Central
Excise)

- Applicant

(By Advocate: Mr. Ajesh Luthra)

Vs

1. Union of India, through
The Chairman,
Central Board of Indirect Taxes and
Customs,
Ministry of Finance, Govt. of India,
Department of Revenue,
North Block, New Delhi-01
2. The Ministry of Finance,
(Through its Secretary)
Department of Revenue,
Central Board of Excise & Customs,
Ministry of Finance, Govt. of India,
North Block, New Delhi-01

- Respondents

(By Advocates: Mr. Ravi Prakash and Mr.Aman Malik)

O R D E R

Justice L. Narasimha Reddy:



The applicant joined the service of the Customs Department as Appraising Officer in the year 1993. He was promoted to the post of Assistant Commissioner (Customs) in the year 2003 and was posted at Mumbai. He was assigned the task of preventive time in the year 2004 and searched the premises of M/s New Era Exports Unit, a 100% EOU, as per the direction of the concerned Commissioner and on finding certain discrepancies, he initiated action. The proprietor of the firm M/s New Era Chataiwala is said to have submitted a complaint, alleging that one Mr. Rajiv Agrawal, Commissioner, demanded bribe of Rs.1 crore and the CBI has also registered a case against him.

2. The applicant contends that though there was no complaint or allegation against him about the demand and acceptance of any bribe, the CBI included his name as one of the accused



and made an effort to get the sanction for prosecution. He contends that though the concerned authority was not inclined to accord sanction, the CBI ultimately got it vide order dated 21.10.2009. He filed WP(C) No.578/2020 before the Hon'ble High Court of Delhi, challenging the order, according sanction for prosecution, and the same was allowed on 11.12.2013. In the meanwhile, he is said to have been superseded in the context of promotion to a higher post. He approached the Tribunal for necessary directions in that behalf.

3. The applicant was issued a charge memo on 18.08.2009 with certain allegations. The Inquiry Officer (IO) submitted his report, holding that the charge against the applicant is not proved. At that stage, the applicant approached the Tribunal by filing OA No. 1821/2014. That was disposed of on 19.10.2014, directing the respondents to conclude the disciplinary proceedings within two months, duly taking into account the report of IO. The Disciplinary Authority (DA) issued a



disagreement note in July, 2017. The applicant filed OA No.1057/2019, challenging the action of the respondents, and with a prayer to direct the respondents to conclude the proceedings in an expeditious manner. That was also disposed of on 05.04.2019, directing the respondents to conclude the proceedings within six weeks and if for any reason, they are not concluded, the benefit of promotion, if denied to him on account of the pendency of the disciplinary proceedings, shall be extended to him. When the action was not taken, as indicated in the order, the applicant filed a Contempt Case. At that stage, the Government passed the order dated 18.06.2019, retiring the applicant on compulsory basis, by invoking FR 56(j). The review sought by the applicant was rejected on 05.03.2020. This OA is filed, challenging the order of compulsory retirement, as affirmed in the review.

4. The applicant contends that the respondents have caused extensive harassment to him ever since 2004 with one set of



proceedings or the other, though there did not exist any material against him at all. He submits that the attempts made to prosecute him were scuttled by the Hon'ble High Court and in the departmental inquiry, a finding was recorded to the effect that the charges are not proved. He contends that with the sole objective of prolonging the harassment to him, a disagreement note was issued and despite the order passed by this Tribunal in OA No.1057/2019, no steps, as indicated, were taken. He submits that the impugned order was passed only with a view to overcome the inability of the respondents to punish him in the disciplinary proceedings; and that the entire exercise is arbitrary, malafide and that the impugned orders are based on no evidence or material, whatever.

5. The respondents filed a detailed counter affidavit. It is stated that the applicant faced serious allegations and accordingly, the proceedings in the criminal court as well as in the departmental proceedings were initiated.



They submit that though the IO held that the charges framed against the applicant are not proved, a disagreement note was issued. They have submitted that the Review Committee constituted by the Government for examination of the case of the officers, who crossed the age of 50 years and 20 years of service, examined the case of the applicant and recommended for revocation of FR 56(j). They contend that the Reviewing Authority has also examined the issue in detail and did not find any basis to interfere with the order of compulsory retirement.

6. The respondents contend that the order of compulsory retirement cannot be treated as a punishment, and that the Tribunal may not interfere with the same. It is also stated that there existed adequate material for invocation of FR 56(j) against the applicant and it is not a case of absence of any material whatever. Reliance is placed upon certain decided cases.

7. We heard Mr. Ajesh Luthra, learned counsel for the applicant and Mr. Ravi Prakash, learned counsel for the respondents.



8. The brief history of the service of the applicant, ever since he joined the Department is furnished in the preceding paragraphs. An attempt was made to prosecute him on the allegation of bribery and the sanction accorded for prosecution was set aside by the Hon'ble High Court in WP(C) No.578/2010. On the same allegation, a charge memo was also issued. The IO submitted his report, holding that the charges are not proved. However, the DA issued a disagreement note. We are not immediately concerned with the various stages of the disciplinary proceedings or the denial of promotion to the applicant, even while his juniors were promoted. Sealed cover procedure was adopted on account of the pendency of the proceedings.

9. The question that arises for consideration in the OA is as to whether the order of compulsory retirement passed against the applicant suffers from any factual or legal infirmity. Time and again, the Hon'ble Supreme Court held that the order of compulsory



retirement passed by invoking the FR 56(j) cannot be treated as a measure of punishment. The employee would get the entire retirement benefits as well as the pension. The only disadvantage, he suffers, is that he would not be in a position to serve the department up to the age of superannuation. However, the entire exercise, referable to FR56(j), is the one for cleansing the department and to clear the deadwood. In certain cases, the power under that provision is invoked to clear menace in the department.

10. It may be true that an attempt made to prosecute the applicant did not fructify and the disciplinary proceedings initiated against him are halfway through. However, what seems to have prompted the respondents to invoke FR56(j) is that for the past about 1 ½ decade, the applicant is facing one proceeding or the other and neither he nor department are able to bestow their full attention to the work since a substantial part of it is diverted for attending the various proceedings. Though no proof or finding

as such exists against the applicant, the allegations, however, are very serious in nature. The demand of bribe said to have been made by an officer, handling a sensitive and important department, would certainly be a matter of serious concern for the Government.



11. It may be quite possible to argue that the provision is invoked just to overcome the inability to prove the charges in the disciplinary or the criminal proceedings. However, the arguments of such nature are repelled by the Hon'ble Supreme court. The method of examination of such proceedings in the judicial review was indicated by the Hon'ble Supreme Court in **Baikunthanath Das & others v. Chief District Medical Officer, Baripada & others**, (1992) 2 SCC 299 where the following parameters were laid.

"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."



12. This was followed in a number of judgments by the Hon'ble Supreme Court, High Courts and the Tribunal. Recently, this Tribunal examined the similar issue in the case of **Capt. Pramod Kumar Bajaj vs. Union of India & Anr.** (OA No. 703/2020). After referring to various judgments of the Hon'ble Supreme Court, the Tribunal held 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 ACRs of an officer are outstanding, the propensity to the challenge or to deviate from the ordinary conduct cannot be ignored.

32. One cannot limit the factors that go into the formation of the opinion in this behalf, nor it can be restricted to the developments spread over, any particular the period. In a way, it is a comprehensive review and evaluation of the history of the officer, once he crosses 50 years



of age. He may have earned promotions till 49th year or beyond. If the only course open to the State to do away with the service of employee is by initiating disciplinary proceedings, there would not have been any necessity to frame Rule 56 (j) at all.

33. It is a facility for the Government to ensure that its energies are not wasted in controlling and otherwise unruly officer who does not permit himself to be regulated at all or has become a menace for the department. After perusing the entire record and on a consideration of the authoritative pronouncements on the subject that are cited by both the parties, we are convinced that the respondents were within their power to pass the impugned order.

34. The applicant argued that the impugned order is tainted with malice in law. According to him, the proceedings initiated one after the other, support his contention. However, if one carefully examines the sequence of events, particularly those in the past 4 or 5 years in respect of the applicant, the inescapable conclusion is that it is only the applicant, if at all anyone, who forced the respondents to take recourse to Rule 56 (j)."

13. The facts of the present case are similar to those in **Ashok Kumar Aggarwal vs. Union of**



India & Anr. (OA No. 1835/2020). In that case also, an attempt made to prosecute the officer did not materialize and even the charge-sheet issued under Rule 14 of the CCS(CCA) Rules was set aside. A plea was raised that an order under FR56(j) was passed just to cover up the inability of the department to prove any acts of misconduct. In a way, the plea was about the absence of material. The Tribunal observed as under:-

"35. So far as the existence of material is concerned, we find that this is not a case where it is totally absent. It has already been mentioned that the utility of the applicant to the department was almost dismal, for the past more than two decades, reasons apart.

36. A question may be raised that when the officer is prevented from discharging duties for such a long period, can that factor be put against him. The answer is that the scrutiny is from the point of view of utility, even by ensuring that the officer gets, what is otherwise due to him on retirement. In addition to that, the issue is not one of dual between the officer and the administration much less that of winner and vanquished. Huge public interest is also involved.

37. Secondly, the applicant faced the criminal as well as departmental charges. It is true that both of them



nipped, when they were buds. In the criminal case, it is almost one of acquittal or quashing, on technical grounds, and otherwise than on merits. If the instances of such nature are to be viewed differently altogether in the context of maintaining an order of punishment under the conduct rules, they would not become totally irrelevant, while reviewing the case of an officer, with reference to FR.56 (j).

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 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."

Though with little variations, similar situation obtains in the instant case also.

14. Continued utility of the officers, handling the sensitive matters such as Customs, Income Tax, depends upon a semblance of transparency and the confidence of the Government on such

officers. Once that is shaken, the Government cannot afford to have such officers on its rolls and expose the very source of income to the States exchequer to vagaries.



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

16. MA No. 1104/2020 also stands disposed of.

There shall be no order as to costs.

(Mohd. Jamshed) (Justice L. Narasimha Reddy)
Member (A) Chairman

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