

(AP) (5)

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 1165 of 1987.

S.M.H. Rizivi Applicant.

Versus

Union of India & others Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

By this application, received under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant, who has been working as an Upper Division Clerk/Caretaker in the office of the Commissioner of Income Tax, Agra, has challenged an order dated 24.6.1987 passed by the Commissioner of Income Tax at Agra and a subsequent order dated 29.10.1987 communicating the order passed on his appeal by the Chairman, Central Board of Direct Taxes, New Delhi. According to the applicant, he has been rendering ~~unblemished~~ service inasmuch as he has not been communicated any adverse entries during his whole service career. He was also allowed to cross Efficiency Bar (EB) on due dates. He had, however, been communicated the impugned order of compulsory retirement under Rule 56~~(2)~~ of the Fundamental Rules retiring him from the post of Upper Division Clerk (UDC) with immediate effect after payment of the usual notice, pay, etc. Being aggrieved by this order he filed an appeal before the Chairman, Central Board of Direct Taxes (CBDT) on 1.7.1987, but his application was also rejected by the second impugned order. According to him he has been retired arbitrarily and in colourable exercise of power. He is mentally and physically fit to perform the duties. On the basis of his date of birth he is due to retire at the end of this month. He has challenged the orders on the ground that he has not been afforded any opportunity to have a say in the matter and so the impugned orders have been passed

violating the principles of natural justice.

2. In their reply the respondents have said that the screening committee, which had its meeting on 27.11.1986 for considering the cases of pre-mature retirement under F.R. 56(j), recommended the case of the applicant for pre-mature retirement and the review committee approved the recommendations and the applicant has been retired prematurely vide order dated 24.6.1987. His appeal to the Chairman, CBDT, has also been considered and rejected. It has also been said in para 6 of the reply in regard to the unblemished service of the applicant that a number of complaints regarding misbehaviour, insubordination, harassment with the staff members and contingent workers and introducing himself sometimes as Inspector of Income Tax and as Income Tax Officer, etc. have been received by the respondents. These were investigated by the Vigilance Branch. He was issued a warning on this account after ~~being~~ ⁱⁿ enquired into the matters. He was also issued a warning in respect of submissions of wrong information that he had passed the High School examination. So the applicant has got a bad record in the Department. A further averment has been made that the applicant stood as a guarantor in a loan advanced by a Bank, which is against the conduct ^{of} ~~of~~ the employees. According to C.C.S.(Conduct) Rules no Government servant ^{by} ~~stand~~ can ~~stand~~ as guarantor for a loan. It has also been said that the applicant had misbehaved with his superior officer, the Assistant Commissioner, Income Tax, Agra. So his conduct was unbecoming of a Government servant. He had used threatening language and refused to obey the instructions. On the basis of this complaint, a warning was issued to the official on the directions of the Commissioner of Income Tax. Commenting on his inefficient work the respondents have said that the applicant has been working as a UDC for the last 20 years and has not got any promotion as he did not pass any departmental examination. So a final retirement order has been issued under Rule 56(j).

3. We have heard the learned counsel for the parties.

The contentions made by the learned counsel for the applicant were that he has been punished for certain acts which squarely fell within the area of disciplinary action and for this he could not have been prematurely retired under Rule 56(j). While on behalf of the respondents it was submitted that his case was examined by the ~~review~~ review committee thoroughly and he was not found suitable for retention and, therefore, he was retired prematurely. The proceedings of the review committee were also filed before us by the learned counsel for the respondents.

4. From the records it is evident that the applicant's name was considered in an earlier meeting of the screening committee ~~as fit~~ and he was found to be retained in service but it was only in view of the complaints made against him ~~as~~ ~~that~~ it was suggested that his name may be again considered in the meeting which was to be held in the near future. It was also mentioned that his confidential reports for the periods 1982-83 to 1985-86 have been assessed as 'good' or 'very good', but still his case be put up before the review committee. The review committee had met on 9.2.1987 to consider the cases of Group 'C' and Group 'D' staff, who would complete 55 years of age or 30 years of service during and before the quarter ending 30.6.1987. The review committee had considered the recommendations of the screening committee and observed that the applicant ~~as produced~~ has had long innings despite the fact that he had ~~a~~ false educational qualification certificate and if ~~a~~ proper action would have been taken in time he would have been out of the Government service long back. The review committee also considered the recommendations of the screening committee which were to retire him for being ineffective and of doubtful integrity.

5. In the averments made by the respondents it has been said that against the complaints enquiries had been made and suitable warnings were administered to the applicant. Similarly in the case of his misbehaviour with the Inspecting Assistant Commissioner he was also given a warning. He was also warned in regard to the

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submission of the false educational qualification certificate. As far as his ineffectiveness is concerned, the ratings of the applicant as 'good' or 'very good' during the period of 5 years, which was considered by the review committee, do not militate against him and a conclusion can also not be drawn that he is of doubtful integrity on the basis of these ratings. The reporting officers have never commented adversely otherwise the same would have been communicated to the applicant.

6. In the case of J.D. Srivastava v. State of Madhya Pradesh (1984 S.C.C.(L&S) 206) the Hon'ble Supreme Court has held that the power to retire a Government servant compulsorily in public interest in terms of his service rule is absolute provided the authority concerned forms an opinion bona fide that it is necessary to pass such an order in public interest. A perusal of the reports of the applicant over the last 5 years which had been considered by the screening and review committees clearly shows that there was nothing ^{by the applicant} against ~~him~~ which necessitated the action resulting in his compulsory retirement. It is, therefore, clear that the action was based on certain other collateral grounds and ^{by} ~~has~~ been taken arbitrarily. As a matter of fact the applicant's case had already been considered at a certain stage and once he had been cleared to be retained in service Rule 56(j) does not lay down that a second review should be made immediately thereafter. According to the procedure a review is to be made in respect of class III employees at the age of 55 years for retention beyond that age upto 58 years and such a review has to be made six months before he attains the age of 55 years and once a decision has been taken to retain the employee beyond the age of 55 years the employee concern will normally continue in service automatically till he attains the age of superannuation. There is, however, no doubt that F.R. 56 lays down that by giving a notice of not less than 3 months in writing or 3 months pay and allowances in lieu an employee can be retired after he has attained the age of 55 years, but such provisions cannot be used to retire an employee.

avoid ^{by}
initiating

on grounds of specific acts of misconduct or as a short cut to ~~initiating~~
formal disciplinary proceedings. It is true that dead wood has to
be weeded out but that itself cannot become and should not become
a ~~cloak~~ or a short cut to terminate the services of an employee,
who has otherwise been satisfactorily working. It cannot replace
a disciplinary action where it is considered necessary and we do
not find that there have been ^{warnings} other relevant factors such as the
history of the applicant's entire service or confidential reports through
out the period of his service upon which reliance was placed to order
the retirement under F.R. 56(j). It is also equally true that lack
of adverse reports may not mean that the officer is efficient or
suitable for continued retention but we do not consider that the
examples cited in the applicant's case for which he has already been
taken up and only warnings were issued could result in the over
all assessment being against his retention. Unlimited discretion is
not available and cannot be accepted for making an order of
premature retirement. It will be the surest menace to public interest
and must fail for unreasonableness, arbitrariness and disguised
dismissal.

7. A particular reference has been made about a recorded
warning which has been issued in 1972, a complaint made in May, 1985,
another complaint made in April, 1985, an incident of 1983 where
the applicant had stood guarantor for a loan and an incident of mis-
behaviour in May, 1986. All these cases fall within a very ^{w/ short} ~~narrow~~
~~and shorter~~
~~complaints~~ of two years, i.e. 1985 and 1986 and once the Department
had decided to issue ~~as~~ ^{w/} warning the matter should have been consider-
ed as closed. Moreover, the applicant had already attained 57 years
of age when this review was made and had only a year left to super-
annuate. A review is normally done of the entire service of an
employee and in judging the employee for retention, his performance
through out his service period should not be lost sight of. Stray
complaints which have been not taken up seriously under D&A Rules

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Ans
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should not form a foundation for arriving at a conclusion to retire a person under F.R. 56(j).

8. In view of above, we allow the application and quash the orders dated 24.6.1987 and the appellate order rejecting the appeal therefrom with all consequential benefits. Parties will bear their own costs.

S. Venkateswaran
MEMBER(J).

3/5/R/1988
MEMBER (A).

Dated: August 18th, 1988.

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