CAT/1/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

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O.A. No. 14 of 1986

~~T.A. No.~~

DATE OF DECISION 4-4-1990

Shri N.K. Rao — Petitioner

Shri Girish Patel — Advocate for the Petitioner(s)

Versus

Union of India & Ors. — Respondent

Shri R.P.Bhatt — Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H.Trivedi : Vice Chairman

The Hon'ble Mr. A.V.Haridasan : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

MGIPRRND—12 CAT/86—3-12-86—15,000

Shri N.K.Rao,
Income Tax Officer Circle VI,
Ward 'G' Ahmedabad
residing at 60 Ridhishwar Society,
Nava Vadaj Road,
Ahmedabad(Gujarat)
(Advocate: Mr.Girish Patel) ... ... Applicant

Versus

1. The Union of India
(Through Secretary to the Govt. of India
Ministry of Finance,New Delhi).

2. The Chairman
Central Board of Direct Taxes,
North Block Secretariat,
NEW DELHI.

3. The Chief Commissioner of Income Tax,
Gujarat, 'Ayakar Bhavan', Ashram Road,
Ahmedabad-380 009.

(Advocate:Shri R.P.Bhatt) ... ... Respondents.

J U D G M E N T

:O.A.No.14 OF 1986:

Date:

Per: Hon'ble Mr.P.H.Trivedi, Vice Chairman.

Cases referred:

(1) 1980 LIC 1184

(2) AIR 1984 SC 630

(3) 1978(1) SLR 489

(4) ATR 1988(1) CAT 326

(5) ATR 1988(1) CAT 322

(6) AIR 1980 (SC) 269

(7) ATC 1989(10) 164

(8) 1989 ATC Vol.9

(9) 1989 ATC Vol.11

(10) AIR 1977 (SC) 2411

(11) AIR 1973 (SC)2701

The petitioner Shri N.K.Rao was compulsorily retired by an order dated 1-7-86 invoking the powers under F.R.56(j)(i). Against the normal age of super annuation on 31-7-87 he was retired when he was running 57 years. His representation dated 2-7-86 was turned down by Government Memorandum dated 28-8-87. He had earlier approached the Tribunal on 7-7-86 on apprehending that he would be compulsori ly retired and the Tribunal ordered that if such an order was passed a period of four days from the date of service of the order would be allowed to him and the

order will not be given effect to for these days.

2. The applicant joined the Income Tax Department on 1-4-51 and was promoted as Inspector of Income Tax on 7-1-66. He was further promoted on 1-4-74 and was allowed to cross the efficiency bar on 1-4-84. He was given a cash award of Rs.1000 and was confirmed as I.T.O. Cl.II from 18-1-81. He was posted as a special auditor and he over-achieved the targets for collection according to his contention.

3. The petitioner's compulsory retirement in public interest in exercise of the powers under F.R.56(j)(i) followed the report of the screening committee headed by the Member Secretary Board of Direct Taxes and composed of other very senior officers. The report of the screening committee was reviewed by a Review Committee headed by Secretary Department of Revenue. The Review Committee after considering the material available held that the applicant was found to be of doubtful integrity. There upon the Government retired him in public interest.

4. While conceding that the compulsory retirement in public interest in exercise of powers under F.R.56(j)(i) is not a punishment and therefore does not attract article 311 of the Constitution of India, Learned Advocate Shri Girish Patel for the petitioner forcefully argued that the courts in exercise of the judicial review of such orders are required to ascertain whether there was any malafide or arbitrariness and in doing so whether government's instructions and the guidelines were followed. In this case the Government's policy guidelines clearly require adverse remarks to be communicated and representations against them to be entertained and disposed of. Admittedly the government has not based its case on these

circumstances. The guidelines also require each government servant's case to be reviewed at the stage of his attaining 50 or 55 years regarding the desirability of compulsory retirement in public interest and if no such retirement is then ordered there is a legitimate expectation that the Government servant will be continued until the date of his normal superannuation. Again admittedly the petitioner has not been retired when he was 50 or 55 years of age. In fact he was retired just 13 months prior to the date of his superannuation. Further according to the circular dated 5-1-78 if an officer has been left with only one year's service he should not be retired on the ground of ineffectiveness and the petitioner has been retired by an order dated 1-7-86 when his normal superannuation was on 31-7-87. Although technically this may be on the border line of the period of 12 months the spirit of the instructions shows that for the reasons of ineffectiveness the petitioner should not have been retired on the eve of his superannuation.

5. The petitioner having been promoted, allowed to cross efficiency bar, and given monetary reward cannot be regarded either as ineffective or inefficient or dishonest. Absence of any adverse remarks communicated to him together with his promotions, and allowing of crossing of efficiency bar and of cash rewards are sufficient to show that his compulsory retirement cannot be brought about in public interest. If the authorities have discovered suddenly any specific instance for which it was necessary to retire him in public interest the proper course was to face him with disciplinary proceedings in which he should have defended himself instead of taking action behind his back for which he would have explained his defence or have any remedy.

6. The learned advocate for the respondents has

largely based their case on establishing that it is a sufficient condition precedent to compulsory retirement in public interest that the authorities have not acted a malafide in exercising powers under F.R. 56 (j)(i) for compulsory retirement of Government servants in public interest is neither a penalty nor casts any stigma and this power is only an extension of the pleasure doctrine under article 310 of the Constitution subject to which all Government servants work. A large number of judgments by which the Tribunal is governed or which must weigh with it show that a judgment of the necessity of retiring the petitioner in public interest has to be of the appropriate authority and not that of the courts which ought not to step into the shoes of the Government or of the proper authority designated for this purpose for deciding whether the petitioner should be retired in public interest or not. If the Government have not acted malafide and have sufficient material on record to which they have confined their decision the validity of the order cannot be questioned by the courts.

7. Both the learned advocates have cited a battery of cases for their contentions. The main propositions of the law arising from such cases can be summed up as follows :-

(1) The judgment of complusory retirement in public interest is of the appropriate authority and not of the courts.

(2) Such a judgment should be free from the taint of malafide.

(3) Such a judgment should be based on the material on record and confined to it.

(4) Orders of compulsory retirement do not impose penalty or cast stigma and article 311 of the Constitution of India is not attracted to them.

(5) The courts have to look into the question whether the order of compulsory retirement is in public interest

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and in the circumstances of the case free from the taint of malafide.

8. On perusal of the record and the documents produced by the respondents the gravamen of the case against the petitioner is contained in the report of the Screening Committee. In its minutes of the meeting of 7-5-86 the case of the petitioner was considered by it. It was noted that the Annual Confidential Reports of the overall periods of the petitioner for 1980-81 and 1981-82 were rated as "Very Good" and his performance for 1982-83 and 1983-84 and 1984-85 were termed as "Good". However, note was taken of deterioration in his performance but as it was still rated as "Good" no further comments were made on this aspect. The committee then referred to certain matters which in its view caused a serious doubt about the petitioner's integrity. Two complaints were made against the petitioner in October 19,77 about the harassing of a certain person for getting a job for the petitioner's son and a warning was issued in October,1977. Certain other complaints having been made about his integrity it was decided that an inspection of his work should be carried out and the petitioner's performance during 1984-85 and 1985 and 1986 was inspected. That inspection report revealed that "besides being an inefficient or ineffective officer the petitioner is an officer of highly doubtful integrity." This conclusion is based upon the petitioner making summary assessments of trust cases which were not within his jurisdiction and for which according to instructions they were not to be completed without prior approval of the Inspecting Assistant Commissioner concerned. However, these instructions were modified in December,1983 which provided that where the beneficiaries of the trust were human beings and not any official entities the assessment may be completed by I.T.O.s themselves, without the approval of the

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Inspecting Assistant Commissioners. The petitioner was found to have completed assessments in a number of trust cases without taking the approval of I.A.C. before finalising the assessment. Some of these trusts had income from building construction activity and the cases of all the builders had been specifically assigned to profession circles and the petitioner had not been given the jurisdiction over such cases. The petitioner completed 90 cases of trusts in the Noble group and 226 cases of trusts which were wholly without jurisdiction. The assessment orders were also found to have been defective in various ways to which the screening Committee has referred and for which they have given some details. The committee has also found that the examination of the cases in which the assessees were asked to produce evidence was most perfunctory and devoid of any meaning. The Review Committee chaired by Revenue Secretary agreed with the conclusion of the Screening Committee that the petitioner may be retired in public interest mainly on the ground of doubtful integrity. By implication the Review Committee did not find itself in agreement regarding the petitioner being compulsorily retired on the ground of his being ineffective.

9. At this stage we must dispose of the contention based upon the petitioner being found ineffective. The respondents' contention that the guidelines regarding the limit of 12 months' period prior to the date of superannuation does not apply to this case is based on two grounds:

(1) The petitioner is not being retired on the ground of his being ineffective and the guideline in terms states that when the Government servant is retired on the ground of his being ineffective this should not be done when only twelve months remain for his normal superannuation.

(2) The second ground is that the petitioner has been retired by an order which is 13 months prior to the date of normal superannuation.

10. From the perusal of the record we do not find that the petitioner has been retired for his being ineffective and therefore this ground does not help the petitioner.

11. We have perused the Annual Confidential Reports of the petitioner. It is not disputed that the petitioner has been promoted, has been allowed increments after crossing the efficiency bar and has been given cash rewards. At each stage the respondents authorities appointed for this purpose made their decisions regarding the deserts of the petitioner based upon his performance. It is also found from the Annual Confidential Reports that prior to the reports covered by the Inspection i.e. from 1980-81 to 1984-85 his performance has been rated as "Very Good" or "Good". Regarding his integrity it has been rated as "Very Good", from 1980-81 to 1984-85. There is a uniform entry "NO" regarding any investigation or enquiry pending or any punishment awarded. Regarding any vigilance matter pending, there is a uniform entry "NO". Regarding the column whether the petitioner is on the suspect list however there is a uniform entry "YES" for the said years.

12. The crux therefore of the case is that the Inspection report and the Screening Committee's recommendations are in flat contradiction of the concurrent Annual Confidential Reports made by the authorities competent to judge the performance of the petitioner in the normal course and recorded entries about their assessments which have to be regarded by the appropriate authorities in the normal course.

13. One ground taken by the petitioner is that Shri Sharma who was a Vigilance Officer and who prepared the Inspection Report was also a Member of the Screening Committee. The Screening Committee is only a

recommending device for scrutinising material placed by the department before it. It is in no sense perfoming any part of any quasi-judicial function entrusted to it as an enquiry officer or disciplinary authority or appellate authority. We therefore, do not find that this circumstance vitiates the impugned order in any way.

14. Many of the cases relied upon by the petitioner can be distinguished from the facts and the circumstances of this case. Order of compulsory retirement in public interest in exercise of powers under FR 56(j)(i) are distinguishable from the orders of termination simpliciter. Jarnail Singh's case requires the veil to be lifted when the order of termination has been assailed on the challenge of misconduct as in that case article 311 of the Constitution of India was attracted becuase misconduct was alleged against the petitioner and adverse entries against him without giving him an opportunity were considered by the D.P.C. for judging his fitness and suitability. In Baldev Chadhha's case poor performance a long time before the order of compulsory retirement was made the basis of the order. In the present case although a warning given in 1977 has been mentioned by the screening committee the Inspection report lists cases which are within 3 years of the petitioner's retirement and it is not as if the entire or even the main foundation of the decision is the warning given to the petitioner in 1977. In fact the warning has been stated only in recapitulating the petitioner's record of performance. In Hansraj's case the Supreme Court has frowned upon the reproduction of the language of the rules without applying mind to the facts of the case to align them with the rules. In the present case the ground of retirement in public interest does not lack that basis. In J.B.Srivastav's case stale remarks in Annual Confidential Reports have been held to be

improper basis for order of compulsory retirement ignoring the more recent assessment. In the present case it is in fact the performance of the officer in the period immediately preceding the impugned order which has been made the basis for the order. In the case of Swami Saran Saxena there was a direction in the order of compulsory retirement about the officer's having been found to have ability of performance and integrity and there was no evidence to show such deterioration of his work or loss of integrity as to deserve retirement. In the present case the screening Committee has brought out the very large number of cases in which careless perfunctory or irresponsible work has been found or orders showing favours to certain assessees so as to allowing them opportunity to convert funds into legitimate channels raising suspicion of the petitioner's integrity. In Valand's case the fact of their being no entry against integrity and ignoring certain entries were made the grounds of the decision while in the petitioner's case there is material to show the circumstances raising suspicion about the petitioner's integrity.

15. The short point is that when an Officer has been rated to be generally "Very Good" and "Good" in his performance and his integrity has not been impeached by the Officers supervising his work in the normal course and who have written the reports year after year also in the normal course, how are these facts to be reconciled with a discovery through the special inspection report that in a number of cases the petitioner is found to have been perfunctory and careless in work, and, to put the best construction on it, that he has exercised jurisdiction when no jurisdiction was given or when it was specifically barred it been exercised for a group of trusts which have been enabled by those orders to divert their funds into legitimate channels ? Had this been a ...10/

question of misconduct in disciplinary proceedings the petitioner's plea that he has been refused an opportunity to defend himself or even to know about the charges against him would have carried great weight. Had it even been a matter of termination simpliciter the question of lifting the veil to ascertain whether it was a punitive order would have been not only relevant but important. In the present case however, the function of judicial review has a limited ambit. We have to confine ourselves to (1) whether there is material on record for judging whether the petitioner's service should be continued in public interest; (2) Whether the appropriate authorities have based their decision and confined it to the material on record; (3) Whether there is any taint of malafide. We find that on all the three counts the orders which have been impugned in this case cannot be held to be flawed or faulted. Government has acted on the recommendations of the Review Committee. It has clearly applied its mind by discounting the screening committee's findings that the officer is an ineffective or an inefficient one. Both the screening committee and the Review Committee have on record abundant material to raise a strong suspicion about the officer's integrity which on perusal of can be readily regarded by them as doubtful. There is no taint of malafide against the Committees which consists of several senior officers who are superior to the petitioner in rank, status and experience. We have to restrain ourselves from entering into the arena of whether the judgment of the committee was properly exercised or whether any other conclusion could have been possible.

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16. When there is a conflict between the findings of the special inspection report and recommendations of the screening committee on the one hand and the annual Confidential Reports recorded by supervisory officers, competent to do so what weight should be attached to the former and whether without harmonising the two a conclusion regarding the officer's not being continued in public interest is vitiated on that ground? No doubt if there is no explanation at all and if the contradiction persist there would be ground for considering that the impugned order needs interference. It would in the circumstances be fair to state that without the special inspection the cases in which careless or perfunctory work or wrong exercise of jurisdiction or other flaws were found might not have been brought to the notice of the supervisory officers and in the absence there of there was no warrant or justification for such officers making any remark adverse to the petitioner. The important question is that when such material is brought on record are the respondent authorities obliged to hold their hands and to allow the petitioner to continue to work? There is scope for a genuine difference of approach in this regard. Many would regard it as appropriate and sufficient to place such an officer in an innocuous post and let him work out his normal period of service on being kept on the shelf. Some persons may adopt the course of disciplinary proceedings against him and if the evidence warrants confront him with even criminal charges. Considering the wide range of cases and the Screening Committee's report and their being of recent origin prior to the impugned order there is reason to believe that government might have considered them to be serious enough not to allow the petitioner a day longer than necessary to work in the employment of the government. The conclusion that his continuance is not in public

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interest therefore, was warranted and on forming that conclusion the action to retire the petitioner compulsorily cannot be held to be illegal or manifestly unjust. When the petitioner has no right to continue in service, when no punishment is imposed or stigma is attached by the impugned order, when there is material on record on the basis of which the appropriate authorities have judged that it was not in public interest to continue the petitioner in service, and when that decision is not tainted by malafide it is not for the courts to give relief to the petitioner on the ground that such a conclusion was not warranted or was not reasonably formed if courts apply their mind to the circumstances in which the appropriate authorities formed it. Also it is not for the courts to apply the tests of reasonable opportunity being given to the petitioner to explain his defence on being given notice of the charges or grounds upon which he was sought to be retired, because no criminal or civil liability or punishment under the relevant disciplinary rules or circumstances of natural justice arises in such a case. In fact when public interest is involved disclosure of the grounds on which the conclusion is formed is not necessary and in certain circumstances may defeat the objective.

17. On behalf of the petitioner it was vigorously argued that the orders of the petitioner which are faulted on account of lack of jurisdiction or mistakes are quasi-judicial and they cannot be the subject of any proceedings against the petitioner. There are provisions in the Income Tax Act which enables superior authorities to review or revise or reject in appeal the orders which was not done in these cases. The petitioner has explained in the additional reply with reference to Section 263 of the Income Tax Act regarding powers of the Commissioners of Income Tax have powers to call for the records of any proceedings if he considers that if any order passed therein by the I.T.O.

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is erroneous, in so far as it is prejudicial to the interest of revenue and that the Commissioner had not thought it fit to reopen these cases and that there was no loss of revenue in the case of Noble Groups, M/s.Desai & Co. and M/s.Premier Builders. He has also disputed that there was laxity in issuing the refund orders. Reliance is also placed on the observations in the Qureshi's case of this Bench regarding disciplinary proceedings for misconduct against the I.T.O. including his orders of assessment or assuming jurisdiction that it will constitute interference in the exercise of quasi-judicial functions and therefore, is not valid or legal. After giving due consideration to these arguments we find force in the plea of the respondents that in cases of adverse remarks or of disciplinary proceedings for misconduct or for retirement as a measure of penalty the question of article 311 or infringement of the procedure laid down by the Government can come about and they have to be distinguished from the executive act of retirement in public interest in which these considerations do not apply. It is sufficient that for retirement under F.R. 56 (j) (i) only the application of mind to the material from which a reasonable inference can be drawn that the retention of the public servant is not in public interest is sufficient for passing the order of compulsory retirement.

18. For the above reasons we hold that the petitioner has not successfully made out his case for our intervention. The application fails. No order as to costs.

(A.V.Haridasan)
Judicial Member

(P.H. Trivedi)
Vice Chairman