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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 48 of 1986
T.A. No.

DATE OF DECISION 22.10.86

SHRI J. R. MEHTA

Petitioner

SHRI GIRISH PATEL

Advocate for the Petitioner(s)

Versus

UNION OF INDIA (MINISTRY OF
FINANCE) CENTRAL EXCISE

Respondent

SHRI J. D. AJMERA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI ... Vice Chairman

The Hon'ble Mr. P. M. JOSHI ... Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

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O.A. No. 43/86

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

JUDGEMENT

The applicant, Shri J. R. Mehta, aggrieved by the order of respondents dated 7.3.'86, compulsorily retiring him from service as Inspector, Central Excise and Customs, Ahmedabad, in exercise of powers, first stated to be under Rule 56 (J) of F.R.S.R. and by corrigendum corrected as Rule 48 of Central Civil Services Pension Rules, has applied to the Tribunal under Section 19 of the Central Administrative Tribunals Act, for quashing and setting aside the said order on the ground of its being arbitrary and malafide. In support of his application, he has stated that his record has been very good and that because of certain differences regarding his transfers, on some occasions in the past, the respondent's officers have a grudge against him, which has resulted in certain adverse entries being made, and certain rewards and other benefits being withheld from him. He has stated that the very fact that initially the orders were passed under F.R.S.R. 56 (J) and subsequently that they had to be revised by corrigendum and resort had to be taken to Rule 48 of C.C.S. Pension Rules, 1972, shows that there has been non-application of mind by the respondents in the passing of the order. The applicant had taken the stand that certificate of qualifying period of service was not obtained from competent authorities and as the relevant date had

passed, resort could not be taken to Rule 48 of C.C.S. Pension Rules; but subsequently during the hearing, on the respondent's showing the documents regarding how the qualifying period of service had been certified to the satisfaction of the authorities passing the impugned orders, the learned advocate for the applicant, Shri Girish Patel, has conceded that the impugned order is not sought to be challenged because of either the applicant's not having completed 30 years of qualifying service, or there being any defect in the competence of the authority certifying it and has not pressed this point. He has stated that adverse entries against the applicant, communicated to him, do not pertain to charges of corruption or any misconduct, but only to intemperate remarks uttered by the applicant about which he has already filed a representation which has not yet been disposed off. The learned advocate has stated that although Government has an absolute right to retire the Government servant on completion of 30 years of service, such a right is governed by bona-fide exercise and that it should not be arbitrary or for collateral reasons and should be exercised in public interest. He contends that there is no circumstance in this case to show termination of the service of the applicant was due to public interest. With a generally satisfactory record of service there is no warrant for initiating action in public interest for retiring him and the mere fact that he was guilty of uttering intemperate remarks cannot account to what in effect, is removal from service without the benefit of disciplinary proceedings in which the applicant has a right to

showing cause. It is necessary, therefore, to go behind the facts of the order and look into the actual reality in which public interest has been invoked for what appears to be arbitrary and malafide exercise of power for collateral reasons not connected with public interest.

2. In reply, the respondents have denied malafide and has stated that the record of the applicant is by no means as satisfactory as made out and that not only the adverse remarks but the entire record of service and his performance generally has to be taken into account when acting under Rule 48 of C.C.S. Pension Rules. The stand of the respondents is that disciplinary proceedings had been started against the applicant and he was punished with stoppage of five increments. The learned advocate for the respondents, Shri J. D. Ajmera, has stated that the mere fact that the corrigendum had to be issued does not show that there has been non application of mind, as it is well-settled that when the facts and circumstances are not ambiguously stated, the incorrect mention of the Rule does not by itself constitute any material defect in the orders. The plea that the representation of the applicant against adverse remarks is under consideration does not constitute any bar to acting under the relevant Rules in F.R.S.R's or Pension Rules because such action does not depend upon disposal of the specific representations against communication of specific adverse remarks.

3. The short point in this case is whether the respondents have acted in public interest. It has

been conceded by the learned advocate for the applicant that the Government have an absolute right to retire the public servant after a completion of 30 years of service under Rule 48 of the C.C.S. Pension Rules or 56(J) of F.R.S.R.'s, and that the instructions governing the procedure to be followed in such cases is almost identical, and regarding the criteria to be applied also there is hardly any dissimilarity. The learned advocate for the respondent have cited A.I.R. 1971 S.C. 40, in which the Supreme Court has laid down that:

"Where an appropriate authority bonafide forms opinion that a Government servant be retired in public interest, he can pass order of compulsory retirement. That opinion cannot be challenged before courts. Nor R. 56(j) requires that the opportunity to show cause against compulsory retirement must be given. Order of compulsory retirement can be challenged on ground that either the requisite opinion was not formed or that the order was passed arbitrarily or on collateral grounds."

He has also cited A.I.R. 1976 S.C. 2547, to show that when there are no express words in the impugned order itself which throw a stigma on the Government servant, the court should not undertake research into the files to discover whether some kind of stigma would be preferred. The learned advocate for the respondent has conceded that in the matter of compulsory retirement, the position of the Government servant is different from what it is when there is a punishment imposed upon him under disciplinary Rules or in which an order expressly or impliedly causing stigma to him is involved. There are no civil consequences as a result of the impugned order.

4. We have given full consideration to the plea of the applicant. The Supreme Court has already held in the judgment cited that the relevant rules regarding compulsory retirement holds a balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest, nor need it be that by implication such removal necessarily imply unfitness or unsuitability of the Government servant. The Supreme Court has stated that there may be various reasons for such an order. Among them can be the consideration of making a post available to a person considered more suitable or more efficient. In this case, the respondent has stated that the relevant review has been carried out by observing proper procedure according to the instructions laid down and, whatever may be the allegations regarding malafide, there have been no allegations of malafide against the Government as such or the very senior officers - in this case a review committee of Customs & Central Excise, three collectors of Baroda, Ahmedabad and Rajkot - who had examined the case and decided that the applicant should be compulsorily retired. The procedure adopted involves that such a decision is arrived at only after a number of officers at fairly senior levels apply their minds and this procedure ensures against the exercise of malafide or arbitrariness of any single functionary. We consider it neither necessary or

appropriate to delve into the inner workings of the offices which have been involved in the examination of such cases in order to find out whether each and every individual officer who dealt with the case has examined the questions involved adequately and appropriately. We do not consider it necessary to take upon ourselves to look into the administration of the relevant officers or offices. Suffice it for us to ascertain whether the action of the respondent is bona-fide and in public interest, and is free from the taint of being arbitrary or activated for collateral reasons. We have also satisfied ourselves that the decision of compulsorily retiring the applicant has been taken by the Government only on the recommendation of three senior officers of the rank of Collectors setting and examining the case of the applicant in a Committee. Thus all safeguards have been taken and prescribed procedures operated in this case. We are unable to persuade ourselves that there is any fact or circumstance on record or during submissions to warrant such conclusion. We, therefore, are satisfied that the position of compulsorily retiring the applicant was well within the scope of the authority of the respondent and does not call for our intervention. It is not for us to substitute the role of the Review Committee or of the Government in this matter or to take upon ourselves their responsibilities. There is nothing to show that the considerations of public interest have not weighed with them. By the nature of the case, they are competent to judge how far public interest will be served by retaining or retiring the applicant.

Respectfully submitted,

The petition for special leave to appeal (Civil) No:1149 of 1987 has been filed in the Supreme Court of India by Mr. J.R. Mehta V/s. Union of India & Ors.

2/-. Our tribunal is joined as respondent No.3 in this case. It is believed that the tribunal is a formal party. The result of the appeal is going to affect the rights of the party only. It is not going to affect in any way the tribunal. Therefore, it is submitted that we need not take any further action in the matter and simply keep a note of the appeal on the record.

3/-. Therefore, if approved, we may not take any action in the matter and keep the Supreme Court's notice on file recording the facts of the appeal in the register.

Kept
below.

SD. (J)

DY. Registrar (J) 28/10/88

Registrar

28/10/88

Hon'ble V.C.

P. A. D. V. C.
28/10/88

P. M. Christian
28/10/88

Central Administrative Tribunal
Ahmedabad Bench
Inward No..... 5625
Date..... 24-X-88

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 1149 OF 1987

Shri J.R. Mehta

... .PETITIONER

VERSUS

Union of India & Ors.

... .RESPONDENTS

To:

1. Union of India,
through the Secretary,
Ministry of Finance,
New Delhi.
2. Collector,
Central Excise & Customs,
Opposite High Court,
Nawrangpura,
Ahmedabad-380009.
3. Central Administrative Tribunal,
Additional Bench, Ahmedabad.

WHEREAS the Petition for Special Leave to Appeal above-mentioned (copy enclosed) filed in this Registry by Mr.R.P. Kapur, Advocate, on behalf of the Petitioner above-named was listed for hearing before this Court on the 26th day of September, 1988 when the Court was pleased to direct that Notice returnable within 4 weeks be issued to the respondents to show cause why special leave should not be granted to the Petitioner above-named.

NOW, THEREFORE, TAKE NOTICE that the above petition is posted for hearing before this Court on the 31st October, 1988, at 10.30 O'Clock in the

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04/10/88

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forenoon or as soon thereafter as may be convenient to the Court for final orders when you may appear before the Court either personally or through counsel and show cause to the Court why special leave as prayed for may not be granted to the Petitioner above-named.

TAKE FURTHER NOTICE that in default of appearance the matter will be decided and determined in your absence.

Dated this the 1st day of October, 1988.


ASSISTANT REGISTRAR

AK.

Central Administrative Tribunal
Ahmedabad Bench
Inward No. 1504.....
Date..... 10.07.91.....

D.NO. 146/87/Sec./IX
SUPREME COURT OF INDIA
NEW DELHI.
DATED: 2nd July, 1991.

From:

The Registrar (Judicial),
Supreme Court of India.

TO:

The Registrar,
Central Administrative Tribunal,
Ahmedabad Bench, Ahmedabad.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 1149 of 1987.
(Petition under Article 136 of the Constitution of India
from the Judgment and Order dated 22nd October, 1986 of the
High Court of Judicature at Central Administrative Tribunal
Ahmedabad Bench, Ahmedabad in O.A. No. 43 of 1986.)

Shri J.R. Mehta

... PETITIONER (S)

VERSUS

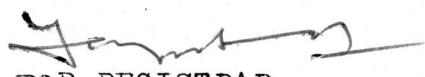
Union of India & Ors.

... RESPONDENT (S)

Sir,

I am directed to inform you that the Petition above-mentioned filed in the Supreme Court was ~~dismissed~~ rejected by the Court on 22nd April, 1991.

Yours faithfully,


FOR REGISTRAR

CS

For personal



