

(18)

CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 210/86

~~T.A.XX No.~~

198

DATE OF DECISION 15/6/91

Narain Singh Petitioner

Mr.S.Natarajan Advocate for the Petitioner (s)

Versus

The Dy.Secretary, Min.of Finance. Respondent

Mr.M.I.Sethna Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. Justice J.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *JK*
2. To be referred to the Reporter or not ? *no*
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 ? *no*


(U.C.SRIVASTAVA)

(19)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.210/86

Narain Singh
C/o.508,Bldg.No.25,
Manish Nagar,
4 Bungalows,
Andheri(W),
Bombay - 400 058.

.. Applicant

vs.

The Deputy Secretary,
Govt. of India,
Ministry of Finance,
Department of Revenue,
North Block,
Old Secretariat,
New Delhi.

.. Respondent

Coram: Hon'ble Shri Justice U.C.Srivastava,Vice-Chairman
Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.S.Natarajan
Advocate for the
Applicant.
2. Mr.M.I.Sethna
Counsel for the
Respondent.

JUDGMENT:

Date: 25/6/91

(Per U.C.Srivastava,Vice-Chairman)

The applicant in this case has approached this Tribunal against the order retiring him compulsorily under F.R.56 J giving him three months salary in-lieu of three months notice on 29th January,1986.

2. The applicant joined the customs service in the year 1957 as a Preventive Officer,Grade I, and he was promoted as Superintendent of Customs in 1973 and was promoted to Grade 'A' as Assistant Collector of Customs in July,1983,which according to him, has been done after his integrity is satisfied. Since then he has been working as Assistant Collector of Customs, Bombay posted at Customs House,Bombay and was promoted to the Selection Grade in the year 1985. The notice of compulsory retirement was given within less than a period of one year after his promotion in the selection grade and some 2½ years after his promotion as Assistant

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Collector of Customs. According to the applicant he has never been communicated any adverse remarks and there was no justification or legal ground for retiring him from service when he has to **got** still eight years.

3. In the reply which has been filed by the department it has been stated that under the instructions of the Govt. of India contained in certain office memorandum a government servant can be retired if his integrity is doubtful. It has been further stated that the applicant was considered along with others in October, 1985 by the Screening Committee consisting of three senior officers and the Screening Committee after going through the material placed before them made recommendation to the Review Committee. In January, 1986 the Review Committee consisting of Secretary Department of Revenue, Ministry of Finance and others recommended that the applicant should be retired under F.R.56(J) on the ground of doubtful integrity. The recommendation was placed before the competent authority and it was decided to retire him with immediate effect. Thus the authority had formed bonafide opinion that in public interest the applicant should be retired compulsorily from service.

4. From the written statement it is clear that it was only within 2 months after his placement in the selection grade that the Screening Committee recommended his retirement. The relevant record has been placed before us **By** Mr. Sethna counsel for the respondent and from the record it is found that the Screening Committee was of the view that as per CIU's intelligence the "seizures" effected under his supervision

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were stage managed, seizing only part of the goods and leaving major part of the goods for monetary considerations. He was transferred from Rummaging and Intelligence Section on 7.12.1984 and posted as Assistant Collector in charge of Group 'D' officers Establishment, which is a non-sensitive posting. The CIU was also of the view that the applicant's style of living was also not in keeping with his status. He has his wife living, but most of the time he stays with a mistress at Andheri. He was also a habitual drinker. However, no complaints have been received from his wife in this behalf. Before his promotion as Assistant Collector in 1983 he was posted as Supdt. at Bombay Airport and reports were there that he was regularly collecting money from the Air Customs Officers working under him, though this is not reflected in his CCR or any other document. From all reports, his integrity is doubted. The Screening Committee also perused the CCRs and found that he was graded 'Just Adequate' during the year 1975-76, 1983 and 1984. In the A.C.R.s for 1983 and 1984 it was mentioned that he has no grasp of the work as A.C. Town Section and has proved disappointment as far as preventive anti-smuggling work is concerned. The overall picture from his CCRs shows that the officer deserves to be classified as 'Inefficient'.

5. The Review Committee considered the recommendations of the Screening Committee and agreed with the recommendation to retire the applicant in the public interest prematurely. Thus the record clearly indicates that the adverse entries from which it was concluded that he was inefficient was never communicated to the applicant and the adverse entries were also

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taken into account for retiring him apart from the vigilance report according to which his integrity was said to be highly doubtful. All these reports were based on the intelligence report. Thus it was the cumulative effect of the adverse remarks in the character roll, based on the reports of the intelligence regarding his doubtful integrity, his compulsory retirement was recommended.

6. Needless to say that uncommunicated entries would not be relied on for retiring an employee and in the instant case uncommunicated entries were also relied on. A reference to Baidyanath Mahapatra v. State of Orissa, 1989(11)ATC 886 is being made in which it was held that "it is a settled view that on the basis of adverse entries and representation against which are not considered and disposed of at all it is not permissible to prematurely retire a government servant." In the instant case as both were taken into account it will not be possible to say that even if the character roll entry part is ignored then of course the intelligence report alone was sufficient to form an opinion against the applicant. It is difficult to say what would have been the opinion of the Screening Committee or Review Committee or the Government in case the ACR would not have been taken into account. However, so far as the intelligence report is concerned the learned counsel contended that the Administrative Tribunals have interfered in such matter and have expressed an opinion that merely on the basis of such report a person cannot be retired compulsorily. Learned counsel made a reference including in the case of Devinder Singh Sandhu v. Union of India, 1990(14)ATC 187.

7. It is not the case of the Union of India also that in any of his character roll his integrity

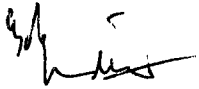
was held to be doubtful. As a matter of fact it was after his integrity was satisfied he was so promoted in 1983. The circumstances which led the respondents to arrive at a conclusion seems arose after selection grade was given to him. In the case of H.C.Gargi v. State of Haryana, (1986) 1 ATC 356, 1986 SCC (L&S) 738, the appellant who was an Assistant Excise and Taxation Officer was compulsorily retired on the ground of doubtful integrity. The Supreme Court observed that there was no entry in the ACR file of the officer relating to doubtful integrity and the only two adverse entries in the last two years of service were regarding his work which has graded as average in one year and below average in the second year without any adverse comment on integrity. It was held that there was no justification to retire him compulsorily in public interest. The Court observed that "the power of compulsory retirement under Rule 3.25(d) of the Rules can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. The test in such cases is public interest as laid down by this Court in Union of India v. Col. J.N.Sinha. It does not appear that there was any material on the basis of which the State Government could have formed an opinion that it was in public interest to compulsorily retire the appellant at the age of 57 years. There was really no justification for his compulsory retirement in public interest. The impugned order of compulsory retirement of the appellant under Rule 3.25(d) of the Rules must therefore be struck down as being arbitrary."

8. In the instant case it was only on the basis of some intelligence report that the applicant's

integrity was held to be doubtful. The wife of the applicant did not make any complaint and no reference to the complaint of any nature finds place in the report of the Screening Committee. It may be because of certain doubtful complaint he was transferred from Intelligence section and posted as Assistant Collector in charge of Group 'D' officers Establishment which is a non-sensitive posting and he was removed from where seizures have to be effected. No conclusion can be drawn from the style of the person's living or that if a person is a habitual drinker that could not be taken for material to hold the integrity of a person doubtful. There was no such material before the Review Committee to be concluded that the integrity of the applicant was doubtful and the same could be attributed to compulsory retirement.

9. Thus in this case we are of the opinion that the order of the respondent dtd. 29th January, 1986 retiring the applicant compulsorily was not in public interest and there was no such material from which it could be said that the retirement was in public interest. As such the compulsory retirement of the applicant is unwarranted and not legal. Consequently the same deserves to be quashed.

10. Accordingly this application is allowed and the order of compulsory retirement of the applicant is quashed ~~and set aside~~ with all consequential benefits. In the circumstances of the case there will be no order as to costs.


(M.Y. PRIOLKAR)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman