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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614.

OA No. 425/86

PATNAIK AJOY KUMAR
403 Pundol Apartments
160 M G Road
Pune 1

.. Applicant

v/s

Government of India
Ministry of Finance
(Department of Revenue)
New Delhi

.. Respondent

CORAM: Hon. Shri Justice U C Srivastava, V.C.
Hon. Shri M Y Priolkar, Member (A)

APPEARANCE:

Shri G S Walia
Advocate
for the applicant

Shri P M Pradhan
Counsel
for the respondents

JUDGMENT:

(PER : U C Srivastava, Vice Chairman)

DATED: 19.7.1991.

The applicant ~~who~~ at the relevant point of time was Collector of Customs and Appeals Bombay, which charge was taken over by him in May 1983. He has approached this Tribunal against the order dated 10.2.1986 compulsorily retiring him under rule 56(j) of Fundamental Rules. He entered the Indian Customs Service in 1958 and from 1975 to 1983 he held the post of Deputy Collector/Additional Collector at Calcutta/Bombay. It has been stated by him that he has worked efficiently and zealously in all these years. He was hospitalised for hypertension in the month of August 1983 and remained under first week of treatment upto/October 1983. It was stated that thereafter he received a letter dated 19.6.85 communicating him the remarks in his record for the period 1.1.84 to 31.12.84 which reads as under:

"The disposal of appeals has not been very satisfactory as far as the volume is concerned.

May be, because the officer was not keeping good health during the period. He should be able to exert more now so as to cover the lost ground."

The applicant represented against the same explaining that during this period he worked for 5 months he had disposed 1,742 cases out of appeals totalling 2,222 received during 1984. His representation was rejected, by the respondents on 5.12.1985. It was thereafter on 28.8.1985 adverse remarks for the year 1983 were communicated to the applicant ie., after a lapse of time and after communicating the adverse remarks for the subsequent year. The adverse remarks for the year 1983 reads that he has not been able to make any particular impact on the position of arrears. The quality of disposal had also to be commented upon some time and on the whole his performance can be described as just adequate. The applicant also represented against the same giving the statement of his disposals. In his representation the applicant stated that during the five months and 21 days the disposal of appeals was 716. Other than these two there are no other adverse remarks which were communicated to him.

It was contended that since the applicant was promoted in 1983 the adverse remarks prior to this promotion will not have any effect as the promotion was given in the face of the adverse remarks. The order of compulsory retirement has been challenged as he could not be retired on the ground of adverse remarks regarding disposal of cases.

In the written statement it has been stated that his work was correctly assessed and besides the two adverse remarks he has received adverse remarks in the confidential reports for the years 1960-61;

1961-62; 1963-64; 1968-69 and 1975-76 and all these remarks were communicated to him. He was also given recorded warning twice in 1970 and 1974 and was awarded a penalty of withholding of increments for two years without cumulative effect.

It has been stated that the recommendations of the Review Committee were accepted as the criteria followed by the Review Committee in making its recommendations are -

- i) Government employees, whose integrity is doubtful, will be retired.
- ii) Government employees, who are found to be ineffective, will also be retired. The basic consideration in identifying such employees should be the fitness/competence of the employee to continue in the post which he is holding. If he is not found fit to continue in his present post, his fitness/competence to continue in the lower post, from where he has been previously promoted, should be considered.
- iii) While the entire service record of an officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding five years or where he has been promoted to a higher post during that five years period, his service in the higher post has been found satisfactory

iv) No employee should ordinarily be retired on grounds of ineffectiveness if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case.

It has been stated that the Review Committee recommended premature retirement of applicant under FR 56(j) on grounds of doubtful integrity. Thereafter the matter was sent to Senior Selection Board and the Appointments Committee of the Cabinet and thereafter he was retired in public interest.

The record has been produced before us and we have gone through the proceedings of the Review Committee. From the record produced before us, the Review Committee was of the opinion that his general reputation was not good and specific instances leading to serious doubts about his integrity. In one case orders regarding classification of Dodecyl Benzene were passed by him, though he was aware of departmental ~~XXX~~ Tariff Advice issued by the Collector of Customs, Bombay, departing from the departmental Tariff Advice. If he had any genuine doubt about the departmental Tariff Advice which was backed by the advice of the CCC Nomenclature Directorate, he should have consulted CBEC which he did not do. The order of applicant has benefited the party to the tune of more than Rs. 2 crores. In another case 32 appeals were disposed by him by a common order by which Saccharine was cleared as Electroplating brightener and all these 32 appeals belonged to one party. The Review Committee was of the opinion it was difficult to believe his integrity and it was on this basis the Review Committee recommended retirement of the applicant.

Thus the position is clear. It is based on the doubtful integrity the Review Committee recommended the applicant's premature retirement.

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The applicant's advocate contended that *regarding integrity* no adverse entry was made in the confidential reports of the applicant and the applicant was not communicated about the same and an opportunity given to represent against them. There was neither any communication in this behalf nor he was ever asked to explain the same.

The learned advocate for the applicant referred to and relied upon various decisions of the Supreme Court and the Central Administrative Tribunal in connection with retirement under 56(j).

IN THE case of UNION OF INDIA V. M.E. REDDY (1980)2 SCC 15, the Supreme Court observed as under:

"Mr. Krishnamurthy Iyer appearing for Reddy submitted that the order impugned is passed on materials which are non-existent inasmuch as ~~there~~ there are no adverse remarks against Reddy who have a spotless career throughout and ~~it~~ if such remarks would have been made in his confidential report, they would have been communicated to him under the rules. This argument, in our opinion, appears to be based on a serious misconception.

In the first place, under the various rules on the subject, it is not every adverse entry or remark that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous or may be connected with general reputation of honesty or integrity that a particular officer enjoys".

In the case of BRIJ BEHARI LAL V. HIGH COURT OF MADHYA PRADESH (AIR 1981 SC 594) the Supreme Court after considering the case of REDDY has held that the order

under FR 56(j) as invalid on the ground that certain adverse remarks had not been communicated.

In the case of BRIJMOHAN SINGH CHOPRA V. STATE OF PUNJAB (1987) 2 SCC 188, the Supreme Court reversing the decision of the High Court of Punjab and Haryana indicated as under:

"We are of the opinion that the same consideration must apply to a case where the adverse entries are taken into account in retiring an employee prematurely from service. It would be unjust and unfair and contrary to principles of natural justice to retire prematurely a government employee on the basis of adverse entries which are either not communicated to him or if communicated representations made against those entries are not considered and disposed of."

The Supreme Court also observed in the above case that old and stale entries are not to be considered and entries for five years are to be considered for premature retirement.

In A.N. SAXENA & ANOTHER V. CHIEF COMMISSIONER (ADM) (1988, 6 ATC 320) The New Delhi Bench of CAT held, any conclusion that an employee is corrupt, dishonest, inefficient or of doubtful integrity has necessarily to be arrived at from reliable material like confidential reports. The compulsory retirement was set aside as it was not based on adverse entries in the CR.

In A.K. GHATAK V. UNION OF INDIA & OTHERS (1990, 12 ATC 423) the New ~~Bank~~ Delhi Bench of the Tribunal held that unverified reports about employee's doubtful integrity - unless employee is given opportunity of representation, such reports cannot be the basis of compulsory retirement.

In V K JAYARAMAN V. UNION OF INDIA & OTHERS (1990, 14 ATC 425) the Delhi Bench of CAT has held that

the Department of Personnel & Administrative Reforms have issued clear instructions that in case where the integrity of an officer cannot be certified, the integrity column in the ACR should be left blank and further investigation has to be made in accordance with the procedure laid down in the administrative instructions. The reporting officer as well as the respondents appear to have been oblivious of these administrative instructions. Inclusion of such adverse remarks in the ACR of an officer without giving him an opportunity to make a representation, is untenable in law. Surely, the Review Committee, the Senior Selection Board and the Appointments Committee, would have been influenced by the aforesaid adverse remarks contained in the ACR of the applicant. This constitutes one of the infirmities of the proceedings leading to the passing of the impugned order relating to compulsory retirement of the applicant. It was further held that in the absence of reasons, retirement order, held, suffers from non-application of mind.

Thus it could be observed based on the above cases the view taken is consistent in connection with compulsory retirement.

Learned counsel for the respondents quoted the case of UNION OF INDIA & ANOTHER V. INDERJIT RAJPUT 1990 (SCLC VOL. I, 572). In that case it was held Good and adverse entries in service record - the good entry for the year 1985 is far outweighed by the adverse material during the relevant period in the respondent's service record and as such the Tribunal was not justified in quashing the order of compulsory retirement of the respondents. In the instant case before us the facts are different inasmuch as there are no entries regarding the applicant's doubtful integrity.

There are no adverse entries in the character of the applicant regarding his doubtful integrity and

and no explanation is given as to the basis on which a conclusion was drawn/arrived at. The record does not indicate on what basis this conclusion was arrived at. Thus in our view the compulsory retirement in public interest is liable to be quashed ~~and~~ ^{as} the order of retirement thus is invalid, illegal.

The application is allowed. The compulsory retirement order dated 10.2.1986 is hereby quashed. The applicant is entitled for all consequential benefits. In the circumstances, however, there would not be any order as to costs.



(M Y PRIOLKAR)
MEMBER (A)



(U C SRIVASTAVA)
VICE CHAIRMAN

This Judgment is set aside by
S/o Ord. dtth 8-9-95
in CA-8371/95 C