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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 669/89

Transfer Application No:

DATE OF DECISION: 29.3.1995

G.P.Talikhedkar. Petitioner

Shri S.Natarajan. Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri S.S.Karkera. Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri P.P.Srivastava, Member(A).

1. To be referred to the Reporter or not ? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal ? ☒

(M.S.DESHPANDE)
VICE-CHAIRMAN

(18)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No.669/89.

G.P.Talikhedkar.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri S.Natarajan.

Respondents by Shri S.S.Karkera.

Oral Judgment:-

¶ Per Shri M.S.Deshpande, Vice-Chairman ¶ Dt. 29.3.1995

By this application, the original applicant who died during the pendency of the proceedings challenged the order of his compulsory retirement under Rule 48 of C.C.S. (Pension) Rules, which came to be passed on 9.7.1987 and ^{sought} his reinstatement in service with back wages and consequential benefits.

2. After the death of the original applicant, the application was continued by his legal representatives. The applicant was appointed in 1956 as a Supervisor by the Collector of Customs and he came to be promoted to the post of Senior Grade Inspector by the order dt. 5.11.1980 (Ex. R-1) by by the Assistant Collector (Headquarters), Central Excise & Customs, Pune. The impugned order (Ex. A-1) dt. 9.7.1987 was passed by the Dy. Collector (P&E), Central Excise & Customs, Aurangabad compulsorily retiring the applicant under Rule 48 of the CCS (Pension) Rules, 1972 while the applicant was working as Inspector, Central Excise.

3. The first challenge raised on behalf of the

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applicant ~~was~~ that the impugned order was not passed as is required to be passed under sub-rule 3 of Rule 48 of the CCS (Pension) Rules, 1972 by the appointing authority which means the authority which is competent to make appointments to the service or post from which the government servant retires. Though the applicant's contention was that he had been as Senior Grade Inspector appointed by the Collector of Customs, he did not produce the order of appointment, but the Respondents produced the order dt. 5.11.1980 by which the applicant was appointed to officiate as Senior Grade Inspector of Central Excise and that was passed by the Assistant Collector (Headquarters), Central Excise and Customs, Pune. The learned counsel for the applicant produced before us the Establishment Order No.128/1989 which was passed on 20.6.1989 by the Deputy Collector (P&E), Central Excise, Bombay-I ~~which was to be passed in respect of Tax Assistants/U.D. Clerks/Stenographers of Central Excise, Bombay - I/Bombay-II/Bombay-III/Pune and Aurangabad Collectorates, promoting them to officiate in the grade of Inspector on regular basis.~~ It was urged on the analogy of this order that the appointing authority for the applicant who was serving in Aurangabad Division would also be the Deputy Collector (P&E), Central Excise, Bombay-I. On the other hand, the respondents produced a notification dt. 7.5.1983 which was issued by the President in exercise of the powers under sub-rule(2) of Rule-9, clause(b) of sub-rule (2) of rule 12 and sub-rule (1) of Rule 24 read with Rule 34 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 carrying out certain amendments in the Notification of the Government of India SRO No.612 dt. 28.2.1957. In the schedule to the said notification for the existing entries, other entries were substituted and

it follows from the change brought about that except for the posts of Chemical Assistant/Laboratory Attender for all other posts the appointing authority would be Deputy Collector of Central Excise (in-charge of Personnel & Establishment) and the authority competent to impose all the penalties was the Deputy Collector, Central Excise (in-charge of Personnel & Establishment). Collectors of Central Excise were constituted as Appellate Authorities. The submission was that since the order No.128/89 was issued on 20.6.1989 by the Deputy Collector (P&E) Bombay-I in respect of certain other persons who came to be promoted to the grade of Inspectors was by the Deputy Collector, Central Excise, Bombay-I, he would be also the authority who would be deemed to be the appointing authority even in terms of the Notification dt. 7.5.1983 for taking action under Rule 48 of the CCS(Pension) Rules, 1972. According to the learned counsel, the notification dt. 7.5.1983 which came to be issued under CCS(CCA) Rules the appointing authority mentioned therein would not be the appointing authority for the purpose of Rule 48(3) of the CCS (Pension) Rules. It must be noted that though the expression 'appointing authority' has been defined for the purpose of Rule 48, it is not a cut and dry definition and what is borrowed is the same expression viz. the authority competent to make appointments to the service or post from which the Government servant retires and the reference must therefore, be deemed to the relevant CCS(CCA) Rules and if the notification dt. 7.5.1983 named the Dy. Collector, Central Excise (in-charge of P & E) it would be the same appointing authority for taking action under Rule 48 under CCS(Pension) Rules also. We find it difficult

to accept the contention that firstly it was the Collector alone who had appointed the applicant who could initiate action under Rule 48 of the Pension Rules. In any event, the applicant has not produced the order appointing him to show that he had been appointed by the Collector and secondly the notification dt. 7.5.1983 would empower the Dy. Collector, Central Excise in-charge of Personnel & Establishment to take action under Rule 48 also.

4. Shri S. Natarajan, the learned counsel for the applicant urged that the impugned order dt. 9.7.1987 was passed by the Dy. Collector (P&E), Central Excise and Customs, Aurangabad and he is not the same authority who had passed the Establishment Order No. 128/89 on 20.6.1989 appointing other persons. Merely from this, it is not possible to infer that the Deputy Collector who took action against the applicant on 9.7.1987 would not be the authority competent to take action under Rule 48 of the CCS (Pension) Rules.

5. The respondents produced the order dt. 14.1.1983 (Annexure R-2) on the subject of Strengthening the Customs & Central Excise department with a view to improve operational efficiency and that provided for allocation of functions and responsibilities to the three Deputy Collectors on clause (iii) of the basis indicated therein and sub-clause 1 of part 1 ~~of the order~~ provided that one Dy. Collector who will be in-charge of all personnel, establishment, administration and vigilance matters, will also be in-charge of Accounts and expenditure control. Units of P.A.O. and C.A.O. would be under his control and he will be the appointing authority for which at present H.A.C. is the appointing authority.

and that necessary action to issue the notification for this purpose was being taken accordingly. The post of H.A.C. in the Central Excise Collectorates was being abolished.

6. Since under these provisions the Dy. Collector aforesaid was the appointing authority no exception could be taken to the order retiring the applicant compulsorily. In Scientific Adviser to the Ministry of Defence and Ors. V/s. S. Daniel & Ors (1991) 15 ATC 799) the following observations were made:

"It has been brought to our notice that notifications have since been issued (for example on August 29, 1979 in the case of the DERL and January 2, 1987 in the case of Ordnance Factories) by the President under Rule 12 empowering certain authorities to exercise disciplinary powers. We need hardly say that any disciplinary proceedings initiated by such authorities from the date when such notifications came into effect will be perfectly valid."

The legality of the impugned order cannot therefore be in doubt.

7. The learned counsel for the applicant urged that we should examine the service record of the applicant in order to ascertain whether the conclusion was properly reached by the review committee which recommended action against the applicant. The respondents produced the relevant records before us. We are aware that we cannot substitute our own Judgment for that of the authority concerned and shall have to look into the service record only with a view to ascertain whether there was some material to justify action that was taken. The possibility that we may have taken a view different

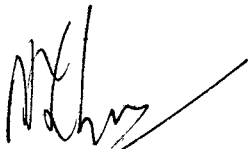
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from the authorities on the same material would not enable us to sit in appeal over the order that was passed. We find that during the period of the applicants service he had been censured on two occasions and the penalty of stopping of one increment was imposed on him on two occasions and it could not be said having regard to the other material which was before the review committee that the review committee did not act fairly. We are not therefore inclined to set aside the impugned order on that ground also.

8. In the result, we see no merit in the application. It is dismissed. No order as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)



(M.S. DESHPANDE)
VICE-CHAIRMAN

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