

REGISTERED

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 30 AUG 1988

APPLICATION NO.

1059

1/87(F)

W.P. NO.

Applicant(s)

Shri S.T. Mahale

To

1. Shri S.T. Mahale
55, 17th Cross
K.R. Puram
Mall eswaram
Bangalore - 560 003

2. Shri M. Narayanaswamy
Advocate
844 (Upstairs), V Block
Rajajinagar
Bangalore - 560 010

3. The Chairman
Standing Committee
E.S.I. Corporation &
Secretary, Ministry of Labour
Shram Shakti Bhawan
New Delhi - 110 001

4. The Director General
E.S.I. Corporation
ESIC Building
Kotla Road
New Delhi

116

Respondent(s)
The Chairman, Standing Committee, ESIC &
Secy. M/o Labour, New Delhi & 2 Ors

5. The Regional Director
Regional Office (Karnataka)
Employees State Insurance Corporation
No. 10, Binny Fields
Binnypet, Sirsi Circle
Bangalore - 560 026

6. Shri M. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

7. Shri M. Papanna
Advocate
99, Magadi Chord Road
Vijayanagar
Bangalore - 560 040

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/SEX/INTERIM ORDER passed by this Tribunal in the above said application(s) on 19-8-88

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DEPUTY REGISTRAR.
(JUDICIAL)

DATED THIS THE NINETEENTH DAY OF AUGUST, 1988

Present: Hon'ble Shri Justice K.S. Puttaswamy .. Vice Chairman
 Hon'ble Shri P. Srinivasan .. Member (A)

APPLICATION NO. 1059/1987(F)

Shri S.T. Mahale
 S/o. T.S. Mahale
 Aged 56 years
 House No.55
 17th Cross
 K.R. Puram
 Malleswaram
 Bangalore-3

.. Applicant

(Shri M. Narayanaswamy, Advocate)

Vs.

1. The Chairman
 Standing Committee
 E.S.I. Corporation and
 Secretary to Govt. of India
 Ministry of Labour
 New Delhi.

2. The Director-General
 E.S.I. Corporation
 Kotla Road
 New Delhi.

3. The Regional Director
 Regional Office (Karnataka)
 Employees State Insurance Corporation
 No.10, Binny Fields
 Binnypet, Sirsi Circle
 Bangalore-26.

.. Respondents

(S/Shri M.S. Padmarajaiah and Shri M. Papanna
 Advocate)

This application have come up for
 hearing before the Tribunal today, Hon'ble Member (A)
 made the following:

ORDER

The applicant before us entered service
 with the Respondents viz. Employees State Insurance
 Corporation (ESIC) as a Lower Division Clerk on 14.9.1956.
 He was promoted successively to the posts of Upper
 Division Clerk, Head Clerk and Manager Grade II/Insurance



Inspector. When he was working as Insurance Inspector in Bangalore Division he was served with a notice of retirement under Fundamental Rules 56(j) [FR 56(j)] by order dated 2.4.1986 issued by the Director General (DG), ESIC. The said order narrated that the DG was of the opinion that it was in the public interest to retire the applicant with immediate effect. In view of this the order, goes on to say, that "the undersigned hereby retires Shri S.T. Mahale, Manager Gr.II/Insurance Inspector, Karnataka Region of Employees State Insurance Corporation with immediate effect, he having already attained the age of 55 years on 8.3.1986". In lieu of three months notice, it was ordered that "he be paid pay and allowance for 3 months calculated at the same rate at which he was drawing the same immediately before his retirement." It is this order which the applicant is challenging in this application.

2. Shri M. Narayanaswamy, learned counsel for the applicant, submitted that the impugned order dated 2.4.1986 purporting to retire the applicant under FR 56(j) and Rule 48 of the CCS (Pension) Rules, 1972, was bad. The DG could not have formed an opinion that it was in the public interest to retire the applicant, for there was no material on which he could do so. The applicant had put in nearly 30 years of unblemished service when the impugned notice was served on him. His character roll all through was excellent and his integrity was unquestioned. FR 56 (j)

1. J. K.

is intended to get rid of deadwood and persons of doubtful integrity. The confidential roll of the applicant would show that he was far from deadwood and was a competent officer and there was no material to come to the conclusion that his integrity was doubtful. As on the date the impugned notice was issued, two departmental inquiries were pending against the applicant for some minor irregularities which did not involve moral turpitude. The charges in both the inquiries were that the applicant had certified that certain payments to insured persons had been made in his presence when no such payment was made and had thus, acting in collusion with the cashier, abetted misappropriation of the said amounts. Actually one of the two inquiries had ended in an order of punishment dated 25.3.1986 by which two increments had been withheld for two years with cumulative effect. The other departmental inquiry was still pending and was dropped after the applicant was compulsorily retired. The only material on which the Review Committee, which met to consider the case of the applicant for continuance in service beyond the age of 55 years, recorded its view that his integrity was doubtful and that it was not in the public interest to continue him in service was the two departmental inquiries. This material should not have been taken into consideration by the Review Committee because they were the subject matter of proceedings already initiated with a view to punish the applicant. If this material is excluded



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there was no material whatsoever to justify the formation of opinion that it was in the public interest to retire the applicant. The respondents cannot exercise the power vested in them under FR 56(j) arbitrarily and if they did so it is for this Tribunal to strike down their action. In any case, if the Review Committee relied on the material in the applicant's vigilance file which had led to the institution of departmental inquiries against him, the order of the disciplinary authority retiring him from service under FR 56 (j) was in reality an order of punishment and such an order could not have been passed without giving the applicant an opportunity of being heard. Shri Narayanaswamy relied on two decisions of this Tribunal rendered in A.P. JAIN V. UNION OF INDIA ATR 1986(2) CAT 180 and 1988(1) ATR 55 RABINDRANATH DEY V. UNION OF INDIA.

3. S/Shri M.S. Padmarajaiah and M. Papanna, learned counsel appeared for the Respondents and sought to refute the contentions of Shri Narayanaswamy. The Supreme Court has held in a number of cases that retirement of a Government servant under FR 56(j) does not constitute a punishment as it does not attach any stigma to his character and does not visit civil consequences on him. Employees of ESIC are governed by the Fundamental Rules framed by the Central Government in respect of its servants. Elaborate procedures have been laid down for reviewing cases of persons who cross the age of 55 in order to determine

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whether it was in the public interest to continue them in service. These procedures constitute a safeguard for the servants of ESIC against arbitrary action. The work of revieweing the cases of such persons is entrusted to a review committee consisting of three very senior officers, a highly responsible body. The said review committee had considered the cases of all persons who were about to cross the age limit set out in FR 56 (j) and after careful consideration had marked out the applicant for retirement under FR 56 (j) in the public interest. The DG who was the appointing authority in respect of the applicant had considered the decision of the review committee and had come to the opinion that it was in the public interest to retire him and that was how the applicant was retired. Shri Papanna clarified that the Review Committee had the entire records of the applicant viz., his character roll, personal file and vigilance records. Reference had been made in the annual confidential reports of the applicant to the departmental proceedings initiated against him which were then pending. One of them had ended in penalty before the review committee met and the order imposing the penalty was part of the vigilance records seen by the review committee. There was nothing preventing the Review Committee from considering material which was the subject of the departmental proceedings in order to determine whether it was in the public interest to continue the applicant in service. While in disciplinary proceedings the charges levelled against a delinquent



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official are subjected to strict proof and the official is given full opportunity of putting forward his case and to disprove the charges, the material forming the basis of those charges are looked at by the review committee from a different angle i.e., to see whether an official who has crossed the age mentioned in FR 56 (j) should be continued in service or should be retired. Since the retirement of a Government official under 56(j) is not a penalty and does not visit civil consequences on the official concerned, the Review Committee assessed the said material not with a view to punish the official concerned. The advice of the Review Committee and the opinion of the competent authority that it is in the public interest to retire a particular official cannot be challenged before this Tribunal except on the ground of there was no material to form such an opinion. When there is some material which is relevant to the formation of such an opinion, it is not for this Tribunal to go into the sufficiency of the material and the material includes everything concerning the conduct of the official noted in his character roll, personal file and vigilance file. The competent authority in this case had formed an opinion that the material leading to the charges levelled against the applicant of certifying payments which had not been made showed that he was a person of doubtful integrity. The material was relevant to the formation of such an opinion and the adequacy of the material was not for this Tribunal to go into. Merely because

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the same material that formed the subject matter of separate disciplinary proceedings was also considered for the purpose of considering the case of the applicant under FR 56(j), his consequent retirement cannot be treated as an imposition of a penalty on him.

4. We have considered the matter very carefully. It is now well settled by a long line of decision of the Supreme Court that compulsory retirement does not visit civil consequences on the government official concerned and is not in the nature of penalty. It does not amount to dismissal or removal to attract the operation of Article 311 or the principles of natural justice. It has also been held that even when an inquiry initiated against a government servant in respect of certain charges is subsequently dropped and thereafter he is retired under FR 56(j), retirement in such circumstances cannot be held to visit a penalty on the government servant. FR 56(j) does not debar the competent authority while considering the suitability of a government servant for continuance beyond the age specified therein from looking into material leading to departmental proceedings against him which are either pending on that date or have been concluded by an order of penalty. The essential distinction drawn by the Supreme Court ~~in this regard~~ is not in regard to what material can be looked into when considering action under FR 56(j) but only about the manner in which such material is to be made use of for



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the purpose of imposing a penalty in disciplinary proceedings ^H and on the one side and for a legitimate exercise of the powers conferred on the competent authority ^H _{on the other} under FR 56(j). In Dalip Singh Vs. State of Punjab, AIR 1960 SC 1305, the Supreme Court observed:

"While misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held - and there is no duty to hold an enquiry - is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal, they form the very basis on which the order is made and the enquiry thereon must be formal, and must satisfy the rules of natural justice and the requirements of Article 311(2)".

The reference to "retirement" in this observation is to compulsory retirement under a Rule of the Saurashtra Civil Service Rules analogous to FR 56 (j), with which we are here concerned. Therefore, if it is found in a particular case as a matter of fact that allegations of misconduct against a Government servant were the foundation of action under FR 56(j) against him, such action would be liable to be struck down as colourable and as an act of punishment, ^H _{and} that would depend on the facts of each case. The competent authority has necessarily to assess the conduct of the government servant concerned to form an opinion whether he should be continued in service or should be retired from service. For this purpose he cannot shut his eyes ^H _{He} to material contained in vigilance file of the government

servant. He is not expected to subject such material to strict proof as in a departmental proceedings. If he honestly comes to the conclusion in the background of such material without verification or giving an opportunity of being heard to the government servant concerned, that the said government servant's integrity is doubtful, he has the power to retire the Government servant under FR 56(j). In this case, the disciplinary proceedings were being separately carried on and one of them had resulted in an order of penalty. The Review Committee looked at the entire record of the applicant, independently of the disciplinary proceedings, for the purpose of FR 56(j) and felt that it was not in the public interest to continue the applicant in service and with this view the competent authority agreed. The facts relating to the disciplinary proceedings was part of the record so seen and were relevant for the formation of the opinion and formed the background for action under FR 56(j); it is not for us to examine whether it was sufficient for the purpose nor is it for us to substitute our opinion for that of the competent authority. So far as the cases relied on by Shri Narayanaswamy are concerned we must point out that in applying settled principles to individual cases, different results could be arrived at depending on the facts and circumstances of each case. We are satisfied that in this case the material which formed part of the disciplinary proceedings were



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looked at by the Review Committee and the competent authority not with a view to visiting any punishment on the applicant but with a view to judging the public interest in continuing him in service which, we repeat, is not in the nature of penal action as decided by the Supreme Court in a number of cases.

5. In view of what we have stated above, we see no merit in this application. We, therefore, dismiss this application but direct the parties to bear their own costs.

Sd/-

VICE CHAIRMAN

Sd/-

MEMBER (A)

TRUE COPY

mr.

R.V. Venkatesh
S. DEPUTY REGISTRAR (JDL) - 37/87
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

AS/

for Addl. Registrar
Yours faithfully

this Court on the 6th day of February, 1989.

noted above and that the same was/were dismissed/disposed of by

Karnataka/Central Administrative Tribunal at Bangalore

High Court of

of the Petitioner above-named from the Judge and Order of the

Special Leave to Appeal to this Court was/Were filed on behalf

I am to inform you that the Petitions above-mentioned for

Sir,

The Chairman Standing Committee & Ors. • Respondent(s)

Versus

• Petitioner(s)

1059/87(P).

Central Administrative Tribunal at Bangalore in Application No.

of Special Leave to the Supreme Court from the High Court

(Petitions under Article 136 of the Constitution of India for

Special Leave to Appeal to the Constitution of India for

PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) No. 14697 of 1988.

at Bangalore.

Central Administrative Tribunal

The Registrar

To

Supreme Court of India.

The Additional Registrar,

From:

Dated the 12-4-1989

NEW DELHI

SUPREME COURT OF INDIA

D. No. 5390/88/

/SEC-IV-A

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