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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD :

O.A.No.317/87,

Date of Judgment: 12-6-90.

A.B.Sundara Royalu

...Applicant

Versus

1. Member Central Board of Excise & Customs,
A.G.C.R.Buildings, 1st Floor, New Delhi.
2. Collector of Central Excise, C.L.S.Buildings, Hyd.
3. Deputy Collector, Central Excise (R&E) C.L.S.
Buildings, Hyderabad.
4. Sri S.R.K.Chowdary, Superintendent, Central Excise,
Chittoor, C/o Assistant Collector, Central Excise,
Nellore.

....Respondents

Counsel for the Applicant : Shri G.Ramachandra Rao, Advo for
Shri D.Sudhakar Rao
Counsel for the Respondents : Shri Naram Bhaskar Rao,
Addl.CGSC

CORAM:

HON'BLE SHRI B.N.JAYASIMHA : VICE-CHAIRMAN

HON'BLE SHRI D.SURYA RAO : MEMBER:(JUDL)

(Judgment of the Bench prepared by Hon'ble
Shri B.N.Jayasimha, Vice-Chairman)

This ^{is an} application from an Inspector of Central Excise
challenging the order issued by the Collector of Central
Excise, Hyderabad in his proceedings No.11/39/20/86-C.I.U
dated 4-8-1986 ^{relieving} relieving the applicant from service prema-
turely.

2. The applicant says that respondent No.4 (Supdt.,..

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Central Excise, Chitoor) had vested interest in hiring a building belonging to ^arelative of his for locating the office. The building was unsuitable from many points of view. The applicant and his colleagues submitted representations against hiring of the building, on 11-9-1985 and 12-9-1985. Respondent No.4 out of ^{Judge}quelling against the applicant wrote adverse remarks in the Annual Confidential report for the year ending 31-12-1985. He also sent a report on 11-9-1985 making false imputations against the applicant. Thereafter the Asst. Collector issued a memo dated 10-1-1986 cautioning the applicant against repetition of such incident in future.

2. The Deputy Collector, Central Excise (Respondent No.3) in his memo dated 21-2-1986 communicated the adverse remark for the year ending 31-12-1985 as indicated below :-

" This Officer on 4-9-1985, indulged in act of misbehaviour and indiscipline in the Office by coming to office in a drunken stage and refusing to leave superintendent's room. Later manipulated diary and other records to show that he was not at all present in the office on the day of occurrence of the incident."

The applicant submitted representation denying the allegation, that he was not present on 4-9-1985 in the office and it had been made out of illwill on the part of respondent No.4. He requested that an inquiry be conducted into the incident so that he could establish his innocence. No

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enquiry was conducted and the adverse remarks also not expunged.

4. Respondent No.2 (Collector, Central Excise, Hyderabad) based on these adverse remarks passed the order of Compulsory Retirement in his order dated No.C.No.II/39/20/86-C.I.U. dated 4-8-1986. This has been issued at the behest of the respondent No.4, who had exercised pressure and influence on respondents 2 and 3.

5. In memo dated 8-8-1986, respondent No.3 informed the applicant that his representation for expunging adverse remarks has been rejected without giving any reasons.

6. The applicant contends that the impugned order is not in public interest and is the outcome of prejudice and hatred on the part of Respondent No.4.

7. The respondents in their counter say that the representations made by the applicant against his adverse remarks was rejected, ^{after a} ~~as~~ an examination of the records showed that the applicant had come to office on 4-9-1985 in a drunken state, indulged in acts of ^{mis} ~~his~~ behaviour and indiscipline and refused to leave the office. Later on he manipulated the diary and other records deliberately, thus destroying the evidence with malafide intention to show

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that he was not at all present in the office on 4-9-85. This was not the first time that the applicant had behaved like this under the influence of alcohol and he is an addict. It is also not correct to say that the impugned order was passed at the behest of respondent No.4. A High Power Committee consisting of the two Collectors of Central Excise and a Deputy Collector as members reviewed the cases of all the employees for judging their fitness and suitability for continued employment, taking into consideration the entire service record. This Committee after review of the entire service record from 1959 to 1985 strongly recommended that he be compulsorily retired from service. The incident which took place on 4-9-1985 is most unbecoming of a Government servant, but that was not the only reason for his compulsory retirement. It is an accident that the incident took place before the High Power Committee held its regular meeting. The incident is not the reason for the impugned order. The respondents admit that the applicant submitted a representation against the impugned order but the order in appeal is still awaited.

8. We have heard the learned Counsel for the applicant and the learned Standing Counsel for the respondents.

9. Shri RamachandraRao's contention is that the applicant's service was uniformly good and no adverse remarks had been communicated in the earlier years of his service. The allegation that he is an addict is not borne out by the reports in the Annual Confidential Reports for the earlier years. The order is malafide and is based on the complaint made by the respondent No.4 who was inimically disposed

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towards the applicant. The applicant is sought to be punished on this account and the order was passed on extraneous consideration other than public interest. The respondents ought to have given the applicant to defend himself by holding an enquiry into the alleged incident on 4-9-1985. The applicant would have proved his innocence, had an enquiry been held. In support of his contentions Shri Ramachandra Rao relied upon Brij Mohan Singh vs. State of Punjab (AIR 1987 SC 948) and Union of India vs. Sheik Ali (AIR 1990 SC 450). Shri Naram Bhaskar Rao has placed before us the relevant records containing the proceedings of the High Power Committee.

10. The point for consideration is whether the incident of 4-9-1985 formed the basis upon which the committee proceeded to recommend the retirement of the applicant. We have, therefore, perused the proceedings of the Committee. The proceedings show that the committee had before it the following summary of the record of service of the applicant:

<u>YEAR</u>	<u>REMARKS</u>
1959--1969	His efficiency was categorised as POOR.
1970	Under factual evaluation of the work done by the Inspector, it was remarked as 'just adequate'. Further his quality of work, promptness in attending to work, industry and consciousness, executive ability, discipline and punctuality, etc., have been categorised as 'just adequate'. The overall assessment by the Reviewing Officer has been noted as POOR. Under other observations, it was remarked that he was addict to drink. It is mentioned (p.118) that he was an addict to drink and that he was not taking sufficient pains to attend to his duties.

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- 1979 The overall assessment of performance and qualities was noted as a very average calibre and he was not found fit for promotion.
- 1981 His quality of work, industry and conscientiousness, executive abilities and noting and drafting were found 'just adequate'. Under overall assessment his performance was categorised as 'just adequate'.
- 1982 This Officer's quality of work, executive abilities, capacity for drafting and noting were categorised as 'just adequate'. The performance of the officer was assessed as 'just adequate'.
- 1985 This officer's discipline was categorised as POOR. Further he attended office on 4-9-1985 in a drunken state and misbehaved. Later he manipulated his Diary and other records in his attempt to show that he was not at all present in the office on that day.

11. The above summary reveals that (a) the committee looked at only the adverse reports and reports for several years, e.g. 1971 to 1978, 1980, 1983 and 1984 were not considered; (b) the incident of 4-9-1985 was particularly taken into consideration by the committee.

12. We have looked into the A.C.Rs. of the applicant for the years mentioned above.

(a) C.R. for the year 1.1.1985 to 31.12.1985:

1. Quality of work:- He has got good knowledge of law and procedure, pays attention to relevant details and is able to analyse problems and find solutions.
2. Promptness in attending to work:- The official is prompt in his executive and office work. Prompt in preparation and submission of reports and returns. -- Good
3. Industry and conscientiousness:- He is industrious and conscientious of his work. -- Good
4. Executive abilities displayed :- He is ready always to assume responsibility. -- Good

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5. Discipline :- On 4-9-85 this officer indulged in acts of misbehaviour and indiscipline in the office by coming to office in a drunken state and refusing to leave Superintendent's room. Matter reported to Assistant Collector by phone. -- Poor

6. Punctuality in attendance :- Good

7. Integrity :- Honest

(b) C.R. for the year 1.1.1984 to 31.12.1984:

1. Quality of work:- He got fair knowledge of routine office procedure and conversant with the Central Excise Rules. -- Good

2. Promptness in attending to work:- He attends to the executive as well as office duties with a fair degree of promptness. -- Good

3. Industry and conscientiousness:- He attends to the allotted duties without complaint. -- Good

4. Executive abilities displayed :- Cooperates in discharging the executive duties allotted by the superior officers. -- Good

5. Discipline :- Disciplined

6. Punctuality :- Punctual

7. Other observations:- Health - Good
Free from all vices which has a bearing in performing the official duties. -- Good

8. Special aptitudes:- Good at compilation of returns and statistical reports. -- Good

9. Integrity :- Honest

(c) C.R. for the year 1.1.1983 to 31.12.1983:

1. Quality of work :- - Good

2. Promptness in attending to work:- - Very Good

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3. Industry and conscientiousness :- - Very Good
4. Executive abilities displayed :- - Very Good
5. Discipline :- - Good
6. Punctuality in attendance :- - Very Good
7. Other observations if any (a) :- Maintains good health. Free from debts.
- Very Good
- (b) Special aptitudes :- Skill in noting drafting and clarifications and valuation matters.
- Good
8. Integrity :- Very Good

(d) C.R. for the year 1.1.1982 to 31.12.1982:

1. Quality of work :- His knowledge of law, ability to analyse problems, capacity for taking decisions independently and dispassionately are not adequate
2. Promptness in attending to work :- - Good
3. Industry and conscientiousness :- - Good
4. Executive abilities displayed :- His executive abilities and readiness to assume responsibility while grappling with difficult problems are just adequate.
5. Discipline :- - Good
6. Punctuality in attendance :- - Good
7. Other observations if any :- (a) Nothing particular, just adequate
(b) His capacity for drafting and noting is average as also his investigative capacity. Just adequate.
8. Integrity :- Honest

(e) C.R. for the year 1.1.1981 to 31.12.1981:

1. Quality of work :- - Just adequate
2. Promptness in attending to work :- - Good

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3. Industry and conscientiousness:- He is industrious. Just adequate.
4. Executive abilities displayed :- - Just adequate
5. Discipline :- - Good
6. Punctuality in attendance :- - Good
7. Other observations, if any. :- (a) Nothing adverse to my knowledge. Good
(b) He can do noting and drafting. Just adequate.
8. Integrity :- - Honest

(f) C.R. for the year 1.1.1980 to 31.12.1980:

1. Quality of work :- - Very Good
2. Promptness in attending to work:- - Very good
3. Industry and conscientiousness:- - Very good
4. Executive abilities displayed :- - Very good
5. Discipline :- - Very good
6. Punctuality in attendance :- - Very good
7. Other observations, if any. :- - Very good
(a) He maintains good health without any family problems. He is not indebted and not addicted to drinking and gambling. He is resourceful.
(b) He has got special aptitude in noting and drafting, tariff classification, valuation, intelligence and investigation work, administrative work and statistical analysis.
8. Integrity :- He is honest

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13. It is seen that the Committee had not considered all relevant material in coming to the conclusion that the applicant is not fit to be continued in service. In fact, the Committee had not considered the reports for the years 1983 and 1984. There is considerable force in the contentions of Shri Ramachandra Rao that the impugned order is passed because of the specific act of misconduct alleged namely that he had come to the office in a drunken state. The guidelines issued by the Govt. laying down the procedure to be followed while considering the case of officers for premature retirement makes the position clear.

3. (b) "Govt. employees, who are found to be ineffective will also be retired. The basic consideration in identifying such employee 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 had been previously promoted previously, should be considered.
- (c) 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 5 years, or where he has been promoted to a higher post during that 5 years period, his service in the highest post has been found satisfactory.
5. The rules relating to premature retirement should not be used -
 - (a) to retire a Govt. servant on ground of specific acts of misconduct, as a short cut to initiating formal disciplinary proceeding; or
 - (b) for reduction of surplus staff or as a measure of effecting general economy without following the rules and instructions relating to retirement."

It is clear from the above that the Committee has not followed the guidelines. All the Confidential Reports have

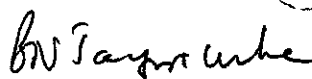
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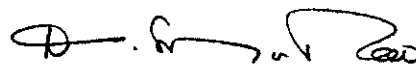
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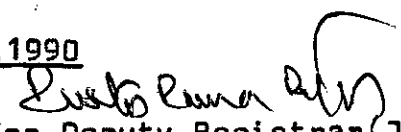
not been taken into consideration. Only the adverse reports of the Confidential Reports have been considered. A specific act of misconduct appeared ^{have} to be weighed with the Committee in coming to the conclusion that the applicant should be retired from service.

In the circumstances, the application is allowed and the impugned order is set aside. No order as to costs.


(B.N. JAYASIMHA)
HON'BLE VICE CHAIRMAN


(D. SURYA RAO)
HON'BLE MEMBER (JUDICIAL)

Dated: 12th June, 1990


For Deputy Registrar(J)

Mvs

To:

1. Member, Central Board of Excise & Customs,
A.G.C.R. Buildings, 1st floor, New Delhi.
2. The Collector of Central Excise, C.L.S. Buildings, Hyd.
3. The Deputy Collector, Central Excise (R&E) C.L.S.
Buildings Hyderabad.
4. Sri S.R.K. Chowdary, Superintendent, Central Excise, Chittoor
C/o Assistant Collector, Central Excise, Nellore.
5. One copy to Mr. D. Sudhakar Rao, Advocate, 1-10-1/1,
Ashoknagar, Hyderabad-500 020.
6. One copy to Mr. N. Bhaskara Rao, Addl. CGSC, CAT, Hyderabad.
7. One spare copy.

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