

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI Hyderabad

O.A. No. 726 of 1987

## DATE OF DECISION

M. B. Panduranga Rao Petitioner

S. M. M. Rayvi Advocate for the Petitioner(s)

Versus

Collector of Central Excise, &amp; others Respondent

K. V. Subba Rao, Addl. C.G.C Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. B. N. Jayasimha, Vice Chairman

The Hon'ble Mr. D. Surya Rao, Member (Jud.)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

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M(J)

( Judgment of the Tribunal delivered by Shri B.N.Jayashimha,  
Hon'ble Vice Chairman )

The applicant who was an Inspector of Central Excise has filed this application questioning the order C.No.II/39/3/87.CIU dated 20th October, 1987 issued by the Collector, Central Excise, Hyderabad (Respondent No.1).

2. The applicant states that he joined the Central Excise Department on 5-4-1956 when he was still a minor, his date of birth being 18-10-1939. He was eligible to enter service only after he had completed 18 years of age i.e. 18-10-1957. In course of time he was promoted as an Inspector of Excise with effect from 1-8-1972 and he continued in that post till 21-10-1987 when he was compulsorily retired by the order dated 20-10-1987. He states that for certain omissions and commissions alleged to have been committed by him in respect of tobacco survey during the years 1975 to 1978, he was visited with two punishments in two separate orders - by the order dated 2-1-1984 a punishment of reduction of increments for two years with cumulative effect and by

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an order dated 18-2-1985 withholding of one increment with cumulative effect. He did not appeal against these orders. These punishments were imposed nearly 7 years after the alleged acts of omission took place. Apart from these two punishments, there was one adverse entry in his Confidential Report for the year 1960-61 and it should be deemed to have been overlooked when he was promoted as Inspector of Excise in the year 1971. There was an alleged adverse entry in the year 1985 which only states that he was unfit for promotion. He further states that he was suffering from mental malady during the years 1976 to 1978. As a result he was involved in a Scooter accident in September 1978 resulting in head injuries. It was during that period that the alleged omissions and commissions took place during the years 1976-78.

3. During the year 1985, he was assessed as "Just adequate" in his Confidential Report and according to the decision of the Supreme Court in Gargi's case (ATC 1986 Vol.I page.356), "just adequate" by itself should not lead to a compulsory retirement. According to the circular dated 9th August 1978 of the Department of

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Personnel & Admve. Reforms, Confidential Record of five years immediately preceding the date of compulsory retirement should be considered. The last 5 years record would not justify his compulsory retirement. He therefore contends that if his mental ability and illness was a factor which leads to his compulsory retirement, he should have been sent before a Medical Board before taking such a decision. His present health is good.

4. The applicant further contends that the impugned order was passed by an authority higher than the appointing authority i.e. Fifth respondent and is therefore invalid being contrary to Rule 48 of the C.C.S.(Pension) Rules, 1972.

5. He further contends that his case for compulsory retirement ought to have been considered in accordance with the relevant instructions only in April 1987 with reference to his character rolls from 1982. His case was taken up for consideration in April 1986, taking 30 years of service counting from the date of his joining service i.e. 5-4-1956 without taking into consideration his date of birth viz. 18-10-1939. Thus the respondents have failed to omit the boys' service and no clearance was obtained from respondent No.4 in regard to qualifying service of 30 years.

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6. He also contends that C.C.S.(Pension) Rules are only complementary to the Fundamental Rules. His retirement should be only under the Fundamental Rules and not under Rule 48 of the C.C.S (Pension) Rules. Accordingly he could be retired only after he had attained the age of 50 years and not after completing 30 years of service.

7. In the counter filed by the respondents it is stated that in 1970, the Government decided to dispense with the cadre of Sub Inspectors and upgraded all posts as Inspector. It admit that the applicant was a minor when he joined the service, but while computing the qualifying service of 30 years, the boy-service from 5-4-1956 to 17-10-1957 has been ignored. The applicant had completed his qualifying service of 30 years on 20-10-1987. The order of compulsory retirement was issued by the appointing authority viz. the Collector, Central Excise, together with pay and allowances for three months in lieu of notice. The order was served on the applicant on 21-10-1987 and the contention that the order came into force from 16-10-1987 is not correct. His salary was paid upto 20-10-1987.

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8. The order of compulsory retirement was made in public interest. The applicant committed several irregularities during the period July 1974 to June 1978. Out of 13 charges framed, 12 were held proved for which penalties were imposed on him. Those were anterior to the date of the applicant's scooter accident. Adverse remarks were communicated to the applicant on 6-5-1985 and it vouches the overall performance of the applicant during the preceding five years. The applicant did not appeal against these entries or on the punishments imposed on him. The decision to retire the applicant was taken only after the review Committee had considered his case. His poor health was not a consideration and therefore he was not referred to a Medical Board. Further the post held by the applicant is the lowest one in hierarchy and the question of considering him for a lower post did not arise. It is further stated that there is no bar to take action under C.C.S.(Pension) Rules. The applicant had 210 days of leave to his credit and he was allowed to encash the same.

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9. We have heard the learned Counsel for the applicant and Shri K.V.Subba Rao, Additional C.G.S.C., for the respondents. Shri Razvi's contention is that the applicant cannot be proceeded under Rule 48 of the CCS (Pension) Rules as there is no provision for retirement after 30 years of service under the Fundamental Rules. He argues that Rule 48(1)(b) of CCS (Pension) Rules enables appointing authority to retire a Government servant in public interest on completion of 30 years of service by giving him a prior notice of three months from his proposed date of retirement. FR 56(a) states that except as provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. The exceptions envisaged in FR 56(a) is found in FR 56(j) which states that "not-with-standing anything contained in this Rule, an appropriate authority shall if it is of opinion that it is in public interest so to do have the absolute right to retire any Government servant by giving him notice of not less than 3 months in writing or three months pay and allowances in lieu of such notice after he has attained 55 years of age if he is in Class 'C' service or post." FR 56(j) provides

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that "notwithstanding any contained in FR 56(j) <sup>the</sup> appropriate authority shall if it is of opinion so to do have the absolute right to retire a Government servant in Class-III (Group-C) service or post who is not governed by any pension rules after he has completed thirty years service by giving him notice of not less than 3 months in writing or three months pay and allowances in lieu of such notice."

He argues that when provisions of different rules overlap each other and such overlapping negates the provisions contained in other rules then the situation of overlappings/negation of rules is to be controlled by "non-obstante clause". Such clause will have the effect of deciding which among the two contradictory rules will prevail and in what situations. FR 56(1) cover only cases of ~~Government~~ Government servants not covered by any Pension Rules and FR 56 makes no mention in respect of persons covered by the Pension Rules. He therefore argues that since FR 56(j) was introduced without a non obstante clause it will take precedence over rule 48(1)(b) of the CCS (Pension) Rules, 1972. The compulsory retirement of the applicant has therefore to be struck down being violative of FR 56(j) holding that Rule 48(1)(b) is not applicable. We are unable to agree with this

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contention. The Pension Rules governs an employee coming within the purview of the Pension Rules. The provision in F.R. 56(L) must be read as to bring within its purview only Class-III Government servants who are not covered by the Pension Rules. The harmonious reading of the provisions under FR and CCS (Pension) Rules would give the following conclusions:-

1. Group 'A' and Group 'B' Officers can be retired after attaining the age of 50 years in public interest after issue of a requisite notice - F.R. 56(j).
2. Other Government employees (other than Group 'A' and Group 'B') can be retired after attaining 55 years of age - F.R. 56(j).
3. All Government employees who have governed by the CCS (Pension) Rules can be retired in public interest after they have completed 30 years of service after issue of a requisite notice - Rule 48-A of CCS (Pension) Rules.
4. The Class-III employees not governed by the CCS (Pension) Rules can be retired after they complete thirty years' service - FR 56(L).

It would therefore follow that the applicant who is covered by the CCS (Pension) Rules can be proceeded with under

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Rule 48-A of the CCS (Pension) Rules and his contention that that rule does not apply to him because there is no provision in the F.R. is not valid. We do not also agree that the absence of non obstante clause should be understood as meaning that persons covered by the Pension Rules cannot be proceeded against on completion of 30 years of service because F.R.56 makes no mention of them. We accordingly reject this contention and hold that not-with-standing there being no provision in the Fundamental Rules, Government can proceed against the applicant under Rules 48(1)(b).

10. The next point for consideration is whether the Review Committee has considered the case of the applicant in accordance with the guidelines issued by the Department of Personnel & Administrative Reforms. Shri Subba Rao has placed the relevant file and also the file containing the Confidential Report

of the applicant. The record shows that the case of the applicant was considered afresh in 1987 and the order was not based on their assessment made earlier in 1986, and which was not acted upon as the applicant had not completed 30 years qualifying service if boy service is excluded. The applicant's record for the years 1982 to 1986 were as follows:-

<u>"Year</u>	<u>Grading by reporting officer</u>	<u>Remarks of Reviewing officer.</u>
1982	Poor/Just adequate	Poor
1983	Just adequate	Adequate
1984	Just adequate	Just adequate
1985	Good	Good
1986	Good	Good"

The Committee on this basis came to the conclusion that the officer's performance has been consistently sub-standard thereby indicating that he has been thoroughly inefficient and ineffective in his work. The Committee assessed him on the basis of his work and had not taken into consideration the punishment to which the applicant has referred to.

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11. Shri Razvi relied upon A.P.Jain Vs. Union of India (1986 ATC 260) in which the New Delhi Bench of the C.A.T. was dealing with the case where the applicant therein was punished for a specific act of misconduct by stoppage of increments and within ten days thereafter a decision was taken to retire him compulsorily on the very same ground. The Bench held that such an order is not in public interest. The facts in the case before us is very different. The punishments imposed on the applicant were not taken into consideration and the Review Committee considered his performance as reflected in his Confidential Records.

12. In these circumstances, the application fails and we accordingly dismiss the same. There will be no order as to costs.

*B.N.Jayasimha*  
(B.N.JAYASIMHA)  
Vice Chairman

*D.Surya Rao*  
(D.SURYA RAO)  
Member (Judl.)

Dated: 18/6 June, 1988.