

(27)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.25 of 1989

.DATE OF JUDGMENT: 13th OCTOBER, 1992

BETWEEN:

Mr. S.S.Bharath Bhushan .. Applicant

AND

The Union of India represented by:

1. The Secretary to Government of India,
Ministry of Finance,
Central Board of Excise & Customs,
New Delhi.

2. The Collector of Central Excise,
Hyderabad. .. Respondents

COUNSEL FOR THE APPLICANT: Mr. K.S.R.Anjaneyulu

COUNSEL FOR THE RESPONDENTS: Mr. N.V.Ramana, Addl.CGSC

CORAM:

Hon'ble Shri R.Balasubramanian, Member (Admn.)

Hon'ble Shri C.J.Roy, Member (Judicial)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI R. BALASUBRAMANIAN, MEMBER (A).

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by the applicant claiming a relief to declare the order of the Central Board of Excise & Customs, New Delhi communicated under the letter No.C.No.II/26/6/87-CIU, dated 7.6.1988 by the Collector of Central Excise, Hyderabad, as arbitrary and illegal and to set-aside the Notice of premature retirement issued by the Collector of Central Excise, Hyderabad under his letter No.C.No.II/39/20/86-CIU, dated 31.7.1986 and to direct the respondents to continue the applicant in service till the date of his superannuation i.e., till 31.8.1987 with all consequential benefits.

2. The facts in brief are as follows:-

The applicant who was appointed as L.D.C. in the year 1953, and promoted as UDC in the year 1966, was served with a Notice of compulsory retirement with effect from the forenoon of the 1st August, 1986 vide orders of the 2nd respondent dated 31.7.1986. The applicant made a representation on 15.6.1987 against the notice of compulsory retirement and the same was followed by another representation dated 07.3.1988 which was rejected by a non-speaking order dated 7.6.1988 of the 2nd respondent.

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3. The applicant also filed O.A. Nos. 45/86 and 44/86 against withholding of his E.B. and denial of promotion and the same were allowed by this Tribunal on 30.6.1987 and 6.7.1987 respectively ordering that E.B. should be given and that the applicant should be considered for promotion. Pursuant to the orders of the Tribunal, the applicant was allowed to cross the E.B. w.e.f. 1.6.1980 and he was also given promotion with effect from 4.4.1984. The applicant challenges the orders of premature retirement on the ground that the appropriate authorities should bonafidely form an opinion that it is in public interest to retire the officer in exercise of the powers conferred by the provisions, ~~thus~~ The decision should not be an arbitrary one and/or should not be based on collateral grounds. No employee should ordinarily be retired on the ground of ineffectiveness of his services if ~~a~~ ^{his performance} during the preceding 5 years ^{has been found satisfactory.} The cases of Government servants covered under 56(j) or 48 of the CCS (Pension) Rules should be reviewed six months before they attain the age of 50/55 years or complete 30 years of qualifying service whichever occurs earlier. No employee should ordinarily be retired on the ground of ineffectiveness in any event ^{if} he would be retiring on superannuation within a period of one year from the date of consideration of his age. Hence, the applicant filed the present application to direct the respondents to continue him in service till the date of his superannuation i.e. till 31.8.1987 with all consequential benefits.

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4. The respondents in their counter affidavit submitted that the appropriate authority, in accordance with the provisions of Fundamental Rule 56(j), has the absolute right to retire a Government servant of Group 'C' cadre, after he has attained the age of 55 years, if it is necessary to do so in public interest. The applicant was charged for misappropriation of Government funds by affixing a previously used revenue stamp and by making alterations and additions in the signature by forging the date and also he failed to remit the LIC premium of Rs.341/- collected from the staff under the salary saving scheme. He also temporarily misappropriated the Government funds recovered in cash towards court attachments and did not credit the same. He also embezzled contingent amount of Rs.35/- without disbursement and by entry in cash book as disbursed on 30.4.1983. After the departmental enquiry, he was found to be negligent and failed to maintain absolute integrity and devotion to duty. Further proceedings of the case were dropped in view of the notice of ~~xxxxxxx~~ retirement issued. The applicant was charge sheeted and punished with stoppage of two increments with cumulative effect which was ^{Subsequently} modified to that of censure on appeal. He was also charge sheeted in 1983 for unauthorised absence from duty and he was censured. The overall assessment of the applicant on the basis of the confidential reports was found that he was deficient in methodology, efficiency and disposals, keeps the work badly in arrears, his work needs constant watch etc. After taking into account all the aspects, the Review Committee consisting

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of the Collector of Hyderabad as Chairman, CCE Bangalore and D.C.(P&V), Hyderabad as members, have found the applicant as an ineffective officer as well as a person whose integrity is doubtful and, therefore, the appropriate authority has taken a decision to retire the applicant in pursuance of the rules in the public interest. The decision to retire him was not arbitrary and not based on any grounds of specific acts of misconduct. Under F.R. 56(j) the review should be taken six months before the Government servant attains the age of 55 years but if the appropriate authority considers at any time after the aforesaid review that the retention of the Government employee will not be in public interest, that authority may take necessary action to retire the officer by following the procedure laid down. An order of compulsory retirement of a Government servant on the ground that it is not in public interest to retain him in service, does not cast any stigma in the Government servant concerned and it does not amount to removal from service within the meaning of Article 311 of the Constitution of India. Hence, the O.A. is liable to be dismissed.

5. We have heard the learned counsel for the applicant Mr. K.S.R.Anjeneyulu and the learned Additional Standing Counsel for the respondents Shri N.V.Ramana. We have perused the records produced by the respondents.

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6. The Review Committee which met on 25.4.86 remarked that he is an ineffective officer as well as a person whose integrity is doubtful and held that the applicant should be retired. Courts can interfere only when the order of premature retirement passed is (a) malafide (b) that it is based on no evidence, or (c) that it is arbitrary, in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order. The Hon'ble Supreme Court which had traversed almost the entire spectrum of cases on the subject of premature retirement had summed up the subject in its decision reported in A.I.R. 1992 (SC) 1020 (Although the subject referred to is compulsory retirement which is a major penalty, the subject actually is premature retirement which is not a punishment). Para 32 of this judgement reproduced below is the summary and it is against this that the action of the respondents is to be tested to see if the Tribunal can interfere.

"32. The following principles emerge from the above discussion.

- (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed is (a) malafide or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

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- (iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such promotion is based upon the merit (selection) and not upon seniority.
- (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above). This aspect has been discussed in paras 30 to 32.

Sub-para (iv) tells how the Review Committee should go about to reach conclusions based on which rest of the action would follow. As stated earlier, the Committee concluded that on level of performance as well as doubtful integrity, it was necessary to retire the applicant prematurely.

As regards performance, no doubt there are adverse remarks in the distant past (between 1954 and 1968 mostly, and 3 entries in 1973, 1978 and 1983. In fact the ones in 1978 and 1983 relate to punctuality in attendance described as just satisfactory and just adequate. These cannot be considered adverse enough to justify the drastic step of premature retirement. These were not considered serious enough even to come in the way either of his crossing the efficiency bar w.e.f. 1.6.80 or his promotion w.e.f. 4.4.84. The D.P.C. which met on 17/18.4.80 to assess his fitness found him fit to cross the efficiency bar. He was, however, not allowed to cross the efficiency bar because of the action of the respondents which was held illegal vide judgement of this Bench dt. 30.6.87 in O.A.No.45/86. Again, his promotion was not effected by the action of the respondents which was held illegal by this Bench in its order dt. 6.7.87 in O.A.No.44/86. Thereafter, all that the Bench did was to direct the respondents to review his fitness or otherwise to be promoted. The respondents reviewed

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his case, found him fit and issued the order dt. 18.12.87 (after his superannuation) promoting him retrospectively w.e.f. 4.4.84. It is, therefore, clear that upto 4.4.84 at least, the level of performance was such as to see him through his crossing the efficiency bar and even promotion.

7. As for doubtful integrity, we have seen the note taken into consideration by the Reviewing Committee. It contained certain misdemeanours on the part of the applicant which the respondents had specifically dealt with according to disciplinary rules. Although they initially invoked the provisions of major penalty, these actions ended with just the lowest penalty of censure. Where is the doubt about his integrity when action had already been taken against the applicant by censuring him? The misdemeanours on the part of the applicant were so weak, that they did not even come in the way of the respondents allowing him to cross the efficiency bar or promoting him in his own right. We see from the note that at the time the Screening Committee had its sitting on 25.4.86 there were two charge-sheets, one dt. 24.12.84 and another dt. 19.7.85, pending against the applicant. The pendency of these two charge-sheets was taken as doubtful integrity on the part of the applicant. In this context, the observations of the Reviewing Committee are of interest. They have remarked:

"He bears a criminal bent of mind (disciplinary proceedings are in progress). Even though disciplinary proceedings are presently pending against this official it is felt that the better course of action would be to retire this officer under F.R.56(j) as normally the proceedings are time consuming."

From the above observations of the Screening Committee it is abundantly clear that they had taken recourse to easing him out under F.R.56(j) as a short cut to continuing the disciplinary proceedings. It has to be remembered that at that stage

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18/12/87

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the applicant was left with very little service as he was to superannuate on 31.8.87. It has been held by several courts including the Hon'ble Supreme Court that recourse to premature retirement should not be taken as a short cut to disciplinary proceedings.

(1) 1985(2) SLR 576.

(2) AISLJ 1988(1) (CAT) 713 Jabalpur Bench.

(3) AISLJ 1988(1) (CAT) 453 Bombay Bench.

~~(4)~~ 1979(3) Vol.22 SLR 734.

(5) 1978(2) AISLJ 147 Delhi (CAT).

That precisely happened in this case. It is not stated anywhere as to what has happened to those charge-sheets. With a decision taken to prematurely retire him, further action on the charge-sheets appears to have been stopped.

8. As stated earlier, there was nothing against the applicant till 4.4.84 which came in the way of his advancement. Between then and April, 1986 when the screening took place, no deterioration in his performance has been reported. As regards integrity, there were two charge-sheets pending and these are not doubts about integrity. If the respondents had material to proceed against the applicant, they ought to have followed that course.

9. Applying what is stated in sub-para (iv) of para 32 of the Hon'ble Supreme Court judgement in A.I.R. 1992 (SC) 1020 we find that the conclusions of the Reviewing Committee are not on the correct lines. The conclusions of the Reviewing Committee are ^{pervasive} ~~wrong~~ and the action to prematurely retire the applicant based on such conclusions is liable to be quashed. We accordingly quash the orders of premature retirement issued vide the impugned order dt. 31.7.86 (Annexure A1 to the application). The applicant is entitled to

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all the consequential benefits therefrom. This order does not however preclude the respondents from pursuing the pending charges in accordance with rules, if they choose. There is no order as to costs.

R. Balasubramanian

(R. Balasubramanian)
Member (A).

C. J. Roy
(C. J. Roy)
Member (J).

23
Dated: 13-10-92

54/10/92
Deputy Registrar (Judl.)

Copy to:-

1. The Secretary to Government of India, Ministry of Finance, Central Board of Excise & Customs, New Delhi.
2. The Collector of Central Excise, Hyderabad.
3. One copy to Sri. K.S.R. Anjaneyulu, advocate, CAT, Hyd.
4. One copy to Sri. N.V. Ramana, Addl. CGSC, CAT, Hyd.
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O.A. 25/89

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY:
MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

Dated: 13/10/1992

ORDER / JUDGMENT

R.A./C.A./M.A. No

in

O.A. No.

25/89

T.A. No.

(W.P. No.)

Admitted and interim directions
issued

Allowed.

Disposed of with directions

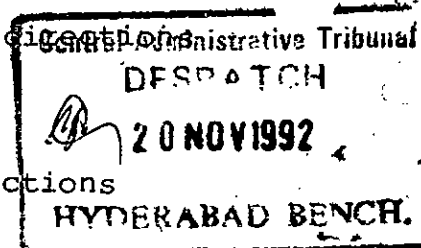
Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered / Rejected

No orders as to costs.



pvm.

Sent to
Despatch Section
with
Nineteen C.C.s
of T. Chandrasekhara
19.11.92